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ABSTRACT

The Adoption Assistance and Child Welfare Act of 1980 provides for annual federal incentive payments to states if they improve foster care programs by (1) avoiding unnecessary removal of children from their homes; (2) preventing extended stays in foster care; and (3) reunifying children with their families or placing them for adoption. To be eligible for funds, states must conduct an inventory of all children in foster care, operate a statewide information system on each child, and have a case review system that meets certain requirements. This report from the Government Accounting Office (GAO) discusses the guidance the Department of Health and Human Services (HHS) has given to states and reports how HHS has determined whether states have complied with requirements. Besides obtaining information from HHS, in 1982 the GAO investigated implementation of the Act in seven states. The GAO concluded that confusion as to state eligibility for funds occurred because HHS neglected to provide specific guidelines for interpreting the law and because it failed to require implementation of all the Act's requirements. The GAO recommends that HHS revise the program regulations and undertake new compliance reviews. Appendices include results of the GAO review of seven states' implementation of the Act and letters from four of the seven states and from HHS commenting on the preliminary version of this report. (CB)

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REPORT BY THE
Comptroller General
OF THE UNITED STATES

Better Federal Program Administration Can Contribute To Improving State Foster Care Programs

The Adoption Assistance and Child Welfare Act of 1980 provides for annual federal incentive payments to states if they improve foster care programs to (1) avoid unnecessary removal of children from their homes, (2) prevent extended stays in foster care, and (3) reunify children with their families or place them for adoption. During the first year of implementation, much confusion existed among the states, and some states received incentive funds without complying with all of the act's requirements. Of the 33 states and Puerto Rico which certified as being in compliance with the program in fiscal year 1981, the Department of Health and Human Services (HHS) later found 4 ineligible. Additionally, five other states voluntarily withdrew from the program anticipating they would be found ineligible.

Confusion occurred in part because HHS did not provide states timely guidance or require implementation of all of the act's requirements. HHS interprets the act to provide it discretion for allowing states to participate without having implemented all of the act's requirements. GAO concludes this is inconsistent with the legislation's intent and that, consequently, states have not been held to requirements as rigorous as those of the act. The Secretary should revise the program regulations to provide additional guidance and undertake new compliance reviews.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-200518

The Honorable Harold Ford
Chairman, Subcommittee on Public Assistance
and Unemployment Compensation
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

In response to your request, we have reviewed the implementation of Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, by the Department of Health and Human Services (HHS) and selected states. This report discusses the guidance HHS has given to states and how HHS has determined if states have complied with the act's requirements.

HHS and state officials have been given an opportunity to review and comment on this report, and their views have been incorporated, where appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time we will send copies to the Secretary of HHS; the Director, Office of Management and Budget; cognizant congressional committees; and other interested parties.

Sincerely yours,

Charles A. Bowsher
Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE SUBCOMMITTEE
ON PUBLIC ASSISTANCE AND
UNEMPLOYMENT COMPENSATION
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

BETTER FEDERAL PROGRAM ADMINISTRATION CAN CONTRIBUTE TO IMPROVING STATE FOSTER CARE PROGRAMS

DIGEST

For years the federal government has provided funds to states for the foster care of children who are homeless or who have received unsuitable care at home. Some foster children have spent years in the public child welfare system with little hope of being reunited with their families or of finding permanent homes elsewhere.

To help correct this situation, the Congress amended the Social Security Act through the enactment of the Adoption Assistance and Child Welfare Act of 1980. This act was aimed at encouraging states to improve their foster care programs through greater efforts to find permanent homes for children. The act provides funds for both maintenance payments (e.g., the cost of basic living expenses, such as food, clothing, and shelter) and foster care child welfare services (e.g., counseling and referral services).

For fiscal years 1981, 1982, and 1983, the Congress appropriated $349, $300, and $395 million, respectively, for maintenance and $163.6, $156.3, and $156.3 million, respectively, for child welfare services. (See pp. 1 to 4.)

Section 427 of the Social Security Act, as amended, provides financial incentives to states to implement and operate a comprehensive set of services, procedures, and safeguards intended to (1) avoid unnecessary removal of children from their homes, (2) prevent extended stays in foster care, and (3) ensure that efforts are made to reunify children with their families or place them for adoption. The incentive payments consist of all funds in excess of $141 million appropriated for child welfare services. For fiscal years 1981, 1982, and 1983, these funds amounted to $22.6, $15.3, and $15.3 million, respectively. (See pp. 3 and 4.)

To be eligible for the incentive funds, states must (1) conduct an inventory of all children in foster care and determine the necessity for and appropriateness of their current placement, (2) operate a statewide information system from which detailed information on each child can be readily obtained, and (3) have a case review system that is intended to ensure that children in foster homes have

--a written case plan,

--periodic reviews of each child's status at least every 6 months by a court or administrative panel, and

--a dispositional hearing by a court or court-approved body within 18 months of a child's original placement and periodically thereafter to determine the child's future status and assure procedural safeguards for the parents. (See p. 3.)

States that certified to the Department of Health and Human Services (HHS) that they had met the requirements of section 427 received incentive funds as well as additional flexibility in using foster care maintenance funds. The Subcommittee asked GAO to review how HHS and selected states implemented the section 427 requirements. To do the work, GAO selected seven states, after consultation with the Subcommittee, that had different types of program administration--state supervised/state administered or state supervised/county administered. All seven states had certified to having met the section 427 provisions and therefore had received incentive funds.

Within each of the seven states, GAO reviewed case files in one urban county or city and one rural county to determine if the case review systems in these jurisdictions met the requirements of section 427.

GAO also obtained information from HHS headquarters and regional offices on their operations and policies. (See pp. 5 and 6.)

ADMINISTRATION OF THE ACT SHOULD BE STRENGTHENED

During the initial year of implementation, much confusion existed among the seven states about how to implement the section 427 requirements, such as what constitutes an acceptable inventory of children in care or a case review system. In addition, although the seven states had taken steps to meet several of the act's requirements, some had not made all the improvements required to receive the incentive funds authorized by section 427. This confusion resulted primarily from inadequate HHS guidance on precisely how the act was to be implemented.

The states had no formal guidance from HHS until final regulations implementing section 427 became effective on June 22, 1983--3 years after the act's passage. The final regulations largely restate the statute with little amplification to help states understand the inventory, statewide information system, or selected case review system requirements. HHS has taken the position that states should be allowed maximum flexibility in interpreting the section 427 requirements. (See pp. 7 to 12.)

HHS' position can be explained, in part, by the changing nature of the relationship between the federal government and the states during the first year after passage of the act. The Congress intended section 427 to be administered as a categorical grant program. When the new administration took office in 1981, it withdrew interim regulations developed by the previous administration, which were quite detailed, and proposed consolidating the foster care program along with 11 other programs into a new social services block grant. Although the Congress passed legislation establishing a social services block grant, it did not include the foster care program but retained it as a categorical grant program. More direct, specific federal guidance is usually provided to effectively carry out congressional mandates in categorical programs than block grant programs.

HHS permitted states to certify their own eligibility for incentive funds. HHS considered this approach necessary because final regulations had not been published and, according to an HHS official, logistical constraints would have made on-site compliance reviews difficult.

Consistent with its position to allow states maximum flexibility, HHS did not, at the time states certified, permit its regional officials to request documentation indicating how the states had implemented the section 427 requirements. Some regional officials, based on their prior experience, recommended that certain states' certifications be disapproved. However, HHS accepted the certifications of all 33 states and Puerto Rico during fiscal year 1981 and the 10 additional states that self-certified for fiscal year 1982 incentive funds. (See pp. 12 and 13.)

Not all states that received the incentive funds had adopted all of the act's required procedures and safeguards. From April through October 1982, HHS conducted compliance reviews in all states that received incentive funds in fiscal year 1981. These reviews found four states ineligible for the fiscal year 1981 incentive funds they had already received. These states had generally not implemented acceptable case review systems. Five other states withdrew their certifications in anticipation of being found ineligible during HHS compliance reviews. About $3.28 million was paid to these nine states. HHS said in January 1984 that it was taking action to recover the fiscal year 1981 incentive funds paid to these states.

While HHS' compliance reviews identified certain states ineligible for incentive funds, the criteria HHS used were less demanding than the law requires, and the reviews did not assure that all the improvements and safeguards mandated by section 427 were adopted by all of the states. HHS adopted its criteria under the premise that the Secretary of HHS had discretion to allow states to participate without having implemented all of the act's requirements. HHS believes that as long as most requirements were being met, the states should receive incentive funds.

One of the act's major requirements--the case review system--contains elements that must be implemented before a state becomes eligible for federal incentive funds. In analyzing the case review system requirements, HHS identified 18 separate elements that supplement the written case plan, 6-month periodic review, and dispositional hearings. States were permitted to receive incentive funds for establishing administrative procedures covering all 18 elements and for implementing--in at least 66 percent of the individual cases--as few as any 13 of the 18 elements. Under these criteria, HHS could find a state in compliance even if none of its cases included all 18 elements. (See pp. 13 to 20.)

GAO believes HHS' position--that only 13 of the 18 elements must be implemented--is inconsistent with the legislative intent. A 1983 federal court decision, upheld on appeal, concluded that states cannot participate in the program without having implemented all of the act's requirements. HHS does have the discretion, however, to establish a percentage of cases which must include all of the act's requirements before a state can be found in compliance. For example, HHS may consider a state to be in compliance with the case review system requirements when 66 percent of its cases implement all 18 elements. But GAO does not believe the Secretary has discretion to allow a state to include fewer than all 18 elements in its case review system.

CONCLUSIONS

GAO believes the 1980 act is specific in its intent that states implement all of the section 427 requirements before qualifying for any incentive funds and that HHS must enforce these requirements. HHS' decision to permit states a great deal of flexibility in the administration of section 427 requirements and the corresponding absence of explicit regulations to guide them in their implementation efforts have placed both states and HHS in a difficult position regarding compliance and enforcement.

Due to the lack of precision in HHS regulations, states have made varying interpretations of the act's requirements. For example, four of the states GAO visited defined the original court hearing or court hearings that occurred shortly after a child entered foster care as the dispositional hearing. This definition is not prevented by the regulations but is contrary to the intent of the act--that is, that the dispositional hearing serve as a catalyst for permanent placement. Normally, sufficient time has not elapsed before a custody hearing to establish a basis for decisions on a child's long-term placement.

The confusion, which both GAO's review and subsequent HHS compliance reviews showed existed during the first year of section 427's implementation, is likely to continue in the absence of explicit HHS regulations for the states to follow on how to meet each of the act's requirements. Further, HHS needs to develop more specific guidance for its reviewers to use in determining whether states are in compliance with these requirements and are, therefore, eligible for incentive funds.

Because there is no assurance that states currently receiving incentive funds will remain eligible under more explicit regulations, HHS should, after revising the regulations, apply them to determine states' continued eligibility for participation.

RECOMMENDATIONS

GAO recommends that the Secretary of HHS (1) revise the program regulations to provide sufficient guidance to states as to what is required to implement section 427 (for specific requirements that GAO recommends be addressed, see p. 22), (2) adopt compliance review guidelines that conform to the revised regulations and contain specific criteria that HHS can use to ensure that states fully implement section 427, and (3) certify all states wishing to receive future section 427 incentive funds (including those that have been previously certified) under the provisions of HHS revised regulations. (See p. 22.)

HHS AND STATE COMMENTS AND GAO'S EVALUATION

HHS questioned the usefulness of GAO's review because it reflects states' implementation of Public Law 96-272 in fiscal year 1981, the first full year after passage of the act. HHS stated that states have made significant progress in implementing the act's requirements since then. While the data on states' implementation are not as current as GAO would like, its findings, conclusions, and recommendations are based on HHS' continuing inaction regarding the provisions of more specific guidance to states covering the implementation of the act.

HHS agreed with GAO's recommendation that the Secretary revise both the program regulations and compliance review guidelines, but the Department disagreed with GAO's interpretation of certain section 427 requirements and the corresponding need for HHS to include more specific requirements in its revised regulations. Based on its review of the act's legislative history, GAO continues to believe its interpretation of the act's requirements is valid.

HHS agreed with the recommendation that once the program regulations and compliance review guidelines have been revised, all certified states must be reviewed in accordance with the revised criteria for future funding.

All seven states covered by GAO's review were given the opportunity to comment on this report. Four of them--Colorado, Maine, Maryland, and Virginia--responded.

The states do not believe that HHS should recover funds from states previously found ineligible largely because they believe it would be unfair to penalize them in view of the limited HHS guidance regarding the act's requirements.

Using compliance guidelines that GAO believes are not as demanding as the law requires, HHS found several states ineligible. The compliance reviews established HHS' minimal acceptable level of compliance and should be enforced. Therefore, GAO agrees with HHS' decision to recover funds from states that have been found ineligible or that have withdrawn their certifications. GAO is not suggesting, however, that HHS retroactively apply new criteria. (See pp. 23 to 30.)

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ABBREVIATIONS

ACYF	Administration for Children, Youth, and Families
GAO	General Accounting Office
HHS	Department of Health and Human Services

CHAPTER 1

INTRODUCTION

The Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means, requested us to review the implementation of section 427 of the Social Security Act, as amended by section 103(b) of the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272, 42 U.S.C. 627). Section 427 gives states financial incentives to implement a comprehensive set of services, procedures, and safeguards intended to (1) avoid unnecessary removal of children from their homes, (2) prevent extended stays in foster care, and (3) ensure that efforts are made to reunify children with their families or place them for adoption.

PLACING CHILDREN INTO FOSTER CARE

The federal government provides funds to states for foster care of children who are homeless or who receive unsuitable care at home. Children enter foster care either when a court orders placement because of the child's behavior or home situation or when the parents voluntarily allow a child to be placed outside the home. Children requiring foster care come to the attention of placing agencies (such as welfare departments) through such sources as police, neighbors, schools, social workers, or the parents. The agency will investigate a reported undesirable situation and determine if a child should be removed from the home. The agency may obtain voluntary placement from the parents or seek judicial intervention.

The judicial review process begins with a court hearing the reasons for removing the child from the home. If warranted, the court issues an order for the placing agency to seek appropriate placement for the child. The child may be placed in an individual foster family home or, if there are special needs, in a residential facility which provides specialized services.

WHY THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT WAS ENACTED

The impetus behind passage of Public Law 96-272 was the desire to change federal child welfare programs that had allowed and even facilitated foster children spending years in the public child welfare system with little hope of being reunited with their families or of finding permanent homes through either adoption or other permanency efforts. Permanency refers to the provision of services that facilitate a child being reunited with his natural parents, adopted, or placed in permanent foster care (that is, the child will not be moved from a particular foster home until he or she leaves foster care).

A 1977 GAO report Children in Foster Care Institutions--Steps Government Can Take to Improve Their Care (HRD-77-40; Feb. 22, 1977) found that placing agencies did not always provide required foster care services, possibly resulting in children receiving inappropriate care or remaining longer than necessary in foster care. In addition to children "drifting" in foster care, studies provided other reasons for corrective legislative action:

--The number of children in foster care, as well as the length of time spent, had increased during the 1970's.

--Large caseloads prevented caseworkers from providing services directed toward finding permanent placements.

--Many children entered foster care who could have been cared for in their own homes if homemaker, day care, or other services had been available.

--Services intended either to keep children in their own homes or to place them for adoption were the most cost-beneficial forms of care but were not generally provided.

ADOPTION ASSISTANCE AND CHILD WELFARE ACT

The Adoption Assistance and Child Welfare Act of 1980 amended title IV-B and created title IV-E of the Social Security Act to encourage states to make greater efforts to find permanent homes for children either by enabling them to return to their own families or by placing them in adoptive homes.

Through the Child Welfare Services program, title IV-B, the Department of Health and Human Services (HHS) provides allotments to states to help them provide social services to protect and promote the welfare of children. The 1980 act amended title IV-B to include fiscal incentives to encourage states to make specific improvements in their foster care systems. The incentive payments consist of all title IV-B funds appropriated in excess of $141 million. In fiscal year 1980, before passage of the 1980 act, title IV-B was funded at a level of $66.2 million. The Congress appropriated $163.6 million for title IV-B in fiscal year 1981, the first year in which states received incentive payments, and $156.3 million in fiscal years 1982 and 1983.

To be eligible for the incentive funds, a state must have implemented the provisions[1] described in the new section 427(a) of title IV-B. Specifically a state must have

--conducted an inventory of all children who have been in foster care for 6 months preceding the inventory and determined the appropriateness of, and necessity for, the current foster care placement and the services necessary to facilitate either the return of the child to the home or the placement of the child for adoption or legal guardianship;

--implemented and have operating a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care can be readily determined;

--implemented and have operating to the Secretary's satisfaction[2] a case review system that provides for a (1) written case plan designed to achieve, among other things, placement in the least restrictive setting available, (2) periodic review of each child's status at least every 6 months by either a court or administrative body that will address certain matters, and (3) dispositional hearing in a family, juvenile, or other court or by an administrative body appointed or approved by the court, no later than 18 months after the original placement (and periodically thereafter during the continuation of foster care), to determine the child's future status, as well as procedural safeguards for the parents; and

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[1] The case review system required under section 427(a)(2)(B) is described in detail in section 475 of the Social Security Act. The system may be divided into three major requirements with 18 supplemental elements. When we refer to the case review system requirements of section 427, the reader should be aware that the specific elements are listed in section 475.

[2] The phrase "to the satisfaction of the Secretary" gives the Secretary discretion to determine the percentage of cases which must include all required protections for the state to be considered in compliance. In our opinion, and in an opinion outlined in a recent court case (Lynch v. King), it does not permit the Secretary to allow states to disregard any of the requirements listed in section 475. Rather, it gives the Secretary discretion to allow states to receive incentive funds even though a small percentage of children have not received all the required protections. For further discussion of this issue and Lynch v. King, see pages 26 to 28.

--established a service program designed to reunite children and parents or to place children for adoption or legal guardianship.

The 1980 act also transferred the Aid to Families with Dependent Children Foster Care program (title IV-A of the Social Security Act) to a new title IV-E. Title IV-E provides funds for foster care maintenance expenses; that is, the cost of basic living expenses, such as food, clothing, and shelter. Funding appropriated for title IV-E's predecessor program, title IV-A foster care, was $349 million in fiscal year 1981 and $300 million in fiscal year 1982. Fiscal year 1983 funding for title IV-E was $395 million.

Certifying compliance with the section 427 requirements gives states additional flexibility in using title IV-E funds. First, under certain conditions states that have implemented the section 427(a) provisions are allowed to transfer title IV-E moneys for use in title IV-B activities. Second, states that have met the section 427(a) requirements and have "implemented a preplacement preventive service program designed to help children remain with their families" as required by section 427(b)(3) may spend title IV-E maintenance money on children removed from their homes pursuant to voluntary placement agreements. Without certifying its compliance with section 427(a) and (b), it can use title IV-E funds only for maintenance payments for children who have entered foster care as a result of a judicial determination (section 472(d)).

As of October 1, 1982, to receive funds authorized by title IV-E, each state was required to have a plan approved by HHS. The plan must provide for, among other things, written case plans, periodic reviews, and a service program, all of which are also required by section 427.

PROGRAM ADMINISTRATION

HHS' Office of Human Development Services is responsible for administering the federal foster care program. The Office develops and issues program policy through regulations, guidelines, and policy notices. It also assists states in developing their foster care plans, approves those plans, and funds state foster care programs. The Office's 10 regional program directors are responsible for monitoring state foster care programs, providing day-to-day program guidance and technical assistance, determining compliance with grant conditions, assessing state agencies' performance, and making recommendations on the agencies' eligibility for funds under section 427.

A state may operate its child welfare services program in one of two ways. The program may be supervised and administered by the state, or it may be state supervised and be administered by local governmental units. In either case a single state agency must be designated to supervise the titles IV-B and IV-E programs. Also, a child welfare services plan must be developed jointly by HHS and the designated agency. Services provided under title IV-B must be coordinated with those provided under the title IV-E plan.

OBJECTIVES, SCOPE, AND METHODOLOGY

As agreed with the Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means, we directed our review toward determining

--how selected states implemented the section 427 requirements,

--what guidance HHS gave states to help them meet the requirements, and

--how HHS determined if states were complying with the requirements.

We also obtained information on how state foster care programs were emphasizing permanency through efforts to reunite children with their families or to facilitate adoption or other permanent placements for children who could not return home. We did not assess HHS' and states' implementation of title IV-E of the act.

We interviewed HHS officials responsible for administering the act and reviewed relevant HHS documents and reports, such as reviews of state child welfare services programs and fiscal year 1981 reviews of states' compliance with section 427. We monitored HHS activities to provide further guidance to the states through 1983 and into 1984. In addition, we obtained general information at HHS headquarters and HHS' Atlanta, Boston, Denver, and Philadelphia regional offices on their operations and policies.

The Chairman's office asked us to concentrate on states that had certified that they performed mandatory services and thus were receiving incentive funding under section 427. In addition to our work at HHS headquarters and regional offices, we performed work from April to October 1982 in seven states--Colorado, Maine, Maryland, South Carolina, Tennessee, Utah, and Virginia--that had certified compliance with the section 427 provisions. (On Sept. 17, 1982, after we had completed our work in Maine, the state withdrew its certification of section 427 eligibility when it became clear that HHS would find the state ineligible to receive the incentive funds.)

We selected the seven states, through consultation with the Chairman's office, from the universe of the 33 states and Puerto Rico that had certified to meeting the provisions of section 427 in fiscal year 1981. We also selected states that had different types of program administration--state supervised/state administered or state supervised/county administered--and some that had Foster Care Review Board systems (that is, independent citizens' boards that review foster care cases).

At the request of the Chairman's office, we selected one urban county or city and one rural county in each of the seven states for review. We reviewed a statistical sample of case files in each jurisdiction and interviewed social services department personnel to determine if states were preparing case plans and conducting periodic reviews and dispositional hearings. The two jurisdictions selected can be considered as a test of the state system but not necessarily as being representative of the entire state.

All seven states and HHS were given the opportunity to comment on this report. Comments were received from HHS, Colorado, Maine, Maryland, and Virginia.

Our review was conducted in accordance with generally accepted government audit standards.

CHAPTER 2

HHS NEEDS TO IMPROVE ADMINISTRATION OF 1980 ACT

During the first year that the states implemented section 427 requirements (fiscal year 1981), much confusion existed about how to implement certain of the act's requirements. Some states received incentive funds without complying with all the section 427 requirements. Of the 33 states and Puerto Rico that certified as being in compliance with the program in fiscal year 1981, HHS subsequently found 4 ineligible. Additionally, five other states withdrew from the program anticipating they would be found ineligible.

Factors which led to improper implementation of section 427 are:

--HHS gave the states little guidance for interpreting and implementing the section 427 provisions--final regulations were not issued until May 23, 1983, nearly 3 years after Public Law 96-272 was enacted. Moreover, the regulations largely restated the statute and provided little additional guidance to help the states understand the requirements.

--HHS permitted states to receive section 427 funds even in cases where it had reason to believe that the states had not satisfied statutory requirements.

--The guidelines developed by HHS for conducting section 427 compliance reviews were designed to allow reviewers to give states broad discretion in interpreting the act and did not require states to implement all the elements specified in the act.

HHS' initial decision to administer the program so as to allow states maximum discretion in how it would be implemented was apparently influenced by an effort underway in 1981 to convert categorical social programs into block grants. The Congress intended section 427 to be administered as a categorical grant program. Therefore, we believe HHS should have issued specific guidelines for states to follow. When the new administration took office in 1981, however, it withdrew interim regulations developed by the previous administration, which were quite detailed, and proposed consolidating the foster care program along with 11 other programs into a new social services block grant. Although the Congress passed legislation establishing such a block grant, it did not include the foster care program but retained it as a categorical grant program. HHS, however, had not, as of June 1984, issued the specific guidance we believe is needed to effectively carry out the mandates of the categorical program.

As discussed in detail at the end of this chapter, we disagree with HHS over how much definition is needed in the regulations and over what the act requires in certain areas. Though HHS agrees that more detailed regulations are needed, and is in the process of revising them, it does not agree with our position that all the elements of a case review system are required and must be implemented in individual cases before a state becomes eligible to receive incentive funds.

Our assessment of the act and its legislative history leads us to conclude HHS' interpretation is incorrect. Our views are consistent with a 1983 federal district court ruling, upheld on appeal, which found that states cannot participate in the program without having implemented all the act's specific requirements.

In response to our draft report, HHS told us that the Department has taken action to recover the amounts of section 427 funds received during fiscal year 1981.

STATE FOSTER CARE PROGRAMS VARIED AND SOME DID NOT COMPLY WITH ALL THE LAW'S REQUIREMENTS

Although all seven states reviewed had certified that they had complied with the provisions of section 427(a) of the Social Security Act and received incentive payments for having done so, five states had not adopted, at the time they certified, one or more of the program or procedural improvements specified in the act. These certifications also allowed the states to use title IV-E funds for the full range of child welfare services rather than have them restricted to maintenance expenses. Four of the seven states transferred title IV-E funds to the title IV-B program.

Five of the seven states had also certified compliance with section 427(b), which allowed them to use title IV-E maintenance funds both for those children voluntarily placed in foster care and those placed by the courts. To certify under section 427(b), states had to meet the requirements of section 427(a) and had to implement a preplacement preventive service program. All five states offered a wide range of services under the preventive program.

The following table shows the amount the states received because of their section 427 certification for fiscal year 1981.

	Share of $141 million (column a)	Share of section 427 incentive funds (column b)	Funds transferred from title IV-E (column c)	Total received due to section 427 certification (columns b and c)
Colorado	$ 1,687,658	$ 570,456	$1,065,868	$1,636,324
Maine	863,192	273,157	-	273,157
Maryland	2,302,378	772,313	-	772,313
South Carolina	2,368,987	790,561	808,870	1,599,431
Tennessee	3,187,327	512,546	800,000	1,312,546
Utah	1,259,358	414,188	362,003	776,191
Virginia	3,177,647	1,082,139	-	1,082,139
	$14,846,547	$4,415,360	$3,036,741	$7,452,101

Our comparison of the seven states' foster care programs with the act's requirements, including a review of case records in two counties or cities in each state, showed that:

--All seven states conducted an inventory of all children who had been in foster care under state responsibility for 6 months preceding the date of the inventory. Only two states, however, could demonstrate that they had determined the appropriateness of, and necessity for, the current foster placement, as required by the act. Officials in the other five states said they had determined the appropriateness of and necessity for the placement but did not have documentation for their determinations. According to the act's legislative history, such determinations were to have been documented. The documentation can serve as the basis for verifying that the requirement has been satisfied.

--All seven states had information systems from which the status, demographic characteristics, location, and placement goals for each child who had been in foster care within the preceding 12 months could be determined. However, the information in one state was not readily available at the state office. The act's legislative history indicates that such data were to have been readily available at the state level to provide a mechanism for tracking children in foster care.

--The jurisdictions visited in five states had written case plans that satisfied the act's requirements for almost all children in foster care. The jurisdictions in two states did not have adequate case plans. One state considered a child's entire case file to be the case plan. The other state had not, at the time of our visit, required case plans to be prepared. Based on our review of the legislative history, a case plan is an identifiable document or a series of related documents to which someone could easily refer to obtain required information. We do not believe either state had satisfied the case plan requirement of section 427.

--The extent to which the status of foster children was periodically reviewed as required by the act varied. The act requires states to review the status of children in foster care at least every 6 months to determine (1) the continuing necessity for and appropriateness of each placement, (2) the extent of compliance with the case plan, and (3) the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care. Over 60 percent of the cases we examined in three states met the act's requirements, including the frequency of the periodic reviews and participation of natural parents and independent parties when required. In the other four states less than one-third of the cases met the act's requirements.

--Two states generally held dispositional hearings within 18 months of a child's placement in foster care as required by the act. Five states did not. Four of those states considered a child's original foster care commitment hearing or a hearing occurring shortly after the child entered care to be the dispositional hearing. Based on our review of the legislative history, we believe that the Congress intended the dispositional hearing to be held after a child's case plan had been in effect for a reasonable period so it could serve as a catalyst for permanent placement. Additionally, state requirements for subsequent dispositional hearings varied widely, ranging from every 6 months to every 42 months.

See appendix I for details of the results of our work in the seven states.

HHS HAS PROVIDED LITTLE GUIDANCE THROUGH REGULATIONS

HHS issued final regulations implementing section 427 on May 23, 1983, effective June 22, 1983, 3 years after the act's passage. Before that time, states had no formal HHS guidance to help them interpret the section 427 provisions. HHS had first issued interim final regulations on December 31, 1980. Those regulations provided detailed interpretations of the act's requirements, but were withdrawn in March 1981. On July 15, 1982, HHS issued a Notice of Proposed Rulemaking, which, after a public comment period, was revised and issued as the final regulations.

The final regulations do not contain specific guidance regarding the inventory and statewide information system requirements. In its discussion of the regulations, HHS states:

> "The language of section 427 of the Act is unusually detailed. Thus, the Department believes there is no need for further specification of data elements for either the inventory or the information system . . ."

The regulations implementing section 427 do, however, discuss the case plan and dispositional hearing requirements although they do not discuss the 6-month periodic review. The regulations require dispositional hearings to "take place within 18 months of the date of the original foster care placement and within reasonable, specific, time-limited periods to be established by the state." Original foster care placement is defined as "the date of the child's most recent removal from his home and placement into foster care under the care and responsibility of the state agency." The regulations do not prevent states, however, from defining court hearings that occur shortly after a child enters foster care as the dispositional hearing.

The May 1983 regulations were slightly more specific than the July 15, 1982, Notice of Proposed Rulemaking but far less detailed than the December 31, 1980, interim final regulations. Regarding this lack of specificity, the discussion section of the 1983 final regulations states that "the Department determined that a less prescriptive approach to implement the statutory requirements was advisable."

The 1980 interim final regulations contained detailed requirements for states' inventories, information systems, and case review systems. For example, for the 6-month periodic review, a component of the case review system, the regulations required that a written notice be sent to the child's parent(s) 2 weeks before the review, notifying them of the date and location of the review and the rights of the parent(s) and the child to be accompanied by a representative of their choice. After the review, a written statement of the conclusions and recommendations was to be made available to all participants. These requirements were deleted from the 1983 final regulations.

The interim final regulations also specified that dispositional hearings (after the initial dispositional hearing) were to be held annually unless a court determined otherwise. The final regulations did not specify a time period for subsequent dispositional hearings.

HHS withdrew the interim final regulations on March 3, 1981, because they had not been reviewed by the Office of Management and Budget and contained minor technical errors. Also, HHS proposed consolidating the foster care program along with 11 other programs into a new social services block grant. The block grant approach was intended to (1) eliminate many federal reporting requirements, regulations, and administrative costs and (2) allow states and localities flexibility to decide how program resources could best be distributed. Although the Congress created nine block grant programs with passage of the Omnibus Budget Reconciliation Act (Public Law 97-35, Aug. 13, 1981), it retained foster care as a categorical grant program.

HHS PROVIDED SECTION 427 FUNDS TO SOME STATES DESPITE INDICATIONS OF NONCOMPLIANCE

HHS permitted states to certify their own eligibility for section 427 funds. HHS considered this approach necessary as final regulations had not been published and, according to the Commissioner of the Administration for Children, Youth, and Families (ACYF), logistical constraints would have made on-site compliance reviews to determine eligibility before awarding funds practically impossible.

HHS issued to the states a preprinted self-certification form which restated the section 427 provisions. States were supposed to complete the form and return it to HHS no later than July 31, 1981, for funds available during fiscal year 1981. During this period of self-certification, no federal regulations were in effect. Compliance reviews for 1981 self-certifications were conducted in fiscal year 1982.

States that did not apply for funds under section 427 in fiscal year 1981, but applied during fiscal year 1982, had to self-certify no later than July 31, 1982. States certifying to fiscal year 1982 eligibility were told to expect a postcertification review in fiscal year 1983 to review eligibility.

HHS regional offices were directed in a July 2, 1981, memorandum from the Associate Chief of the Children's Bureau, ACYF, not to request any documentation from states, but to review the certification against the regions' knowledge of the states' program from previous reviews and joint planning. If regional officials had good reason to doubt that a state had met all the requirements, they were to inform state officials immediately. Regional officials could approve certifications, but could only recommend disapproval. The recommendation for disapproval, and a memorandum explaining the reasons therefor, had to be forwarded to the Commissioner, ACYF.

Thirty-three states and Puerto Rico self-certified for fiscal year 1981, and HHS regional offices recommended that five states' certifications be disapproved.[1] To allow time to resolve the regional offices' concerns, the certification deadline for the five states was extended until August 31, 1981. The memoranda from regional offices stated that two of the states were not meeting section 427 requirements for both the information system and the case review system, and three were not meeting the case review requirements.

The fiscal year 1981 certifications of the five states were approved by the Commissioner. Of the five states, two later withdrew their certifications in anticipation of being found ineligible, and two others were found to be ineligible as a result of HHS' compliance reviews conducted in 1982. The fifth state was found (conditionally) eligible, although this was due to an HHS error in computing the compliance review results. Had the results been tabulated correctly, the state would have been found ineligible. When HHS officials discovered the error, they did not reverse the finding of conditional eligibility. They reasoned that since HHS had already informed the state it was eligible to receive the incentive payments and since the mistake was made by HHS and not the state, the finding of compliance should be allowed to stand.

HHS COMPLIANCE REVIEWS NEED STRENGTHENING

Between April and October 1982, HHS performed compliance reviews for fiscal year 1981 and certain 1982 certifications to verify that states had implemented the requirements to which they had certified. Some criteria HHS used were less demanding than the law required, and by using these criteria HHS did not assure that all of the mandated improvements and safeguards had been adopted.

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[1] In one case, in the cover letter attached to a state's statement of self-certification, the state acknowledged that its case review system was not fully operational.

In fiscal years 1981 and 1982, 44 states certified their eligibility to receive section 427 funds. All 33 states and Puerto Rico that certified their section 427 eligibility during fiscal year 1981 were reviewed by HHS compliance teams. The 10 states that did not self-certify for 1981 incentive funds but had certified for fiscal year 1982 were to be reviewed during fiscal year 1983.

Review process

HHS' reviews consisted of two parts--a review of state administrative procedures to verify that the state had adequate policies for implementing each section 427 requirement and a review of a sample of case records to verify that the required procedures were operating and that services were appropriately provided to children and their families. This case record review looked for evidence of a case plan, a periodic review, a dispositional hearing, and the 18 elements identified by HHS from section 427(a)(2)(B) of the act (see app. II) that supplement these three major requirements.

The compliance reviews had four possible outcomes depending on the (1) adequacy of state administrative procedures and (2) percentage of acceptable cases--those that contained a written case plan, periodic review, and dispositional hearing and included any 13 of the 18 elements HHS identified from the act. The possible outcomes were:

--Ineligible: State does not have basic administrative procedures; that is, adequate laws, policies, procedures, and systems to indicate compliance with section 427 requirements.

--Ineligible: State has the administrative procedures, but case file review showed 65 percent or fewer cases were acceptable.

--Conditional compliance: State administrative procedures were adequate, and 66 to 79 percent of sampled cases were found acceptable. The state remained eligible for the additional funds for the year under review, but had to attain an 80-percent level of acceptable cases within the following year to continue eligibility.

--Substantial compliance: State administrative procedures are adequate, and 80 percent or more of sampled cases were found acceptable.

The regional office provided a report of the review results to the state specifying whether it was eligible for section 427 funds. If the state had not met the conditional or substantial compliance requirements, a recommendation for disapproval of a state's eligibility was made to the Commissioner, ACYF.

For fiscal year 1981, HHS found 17 states in substantial compliance, 7 states in conditional compliance, and 3 states and Puerto Rico ineligible. According to an HHS official, five states withdrew their certifications for fiscal year 1981 in anticipation of being found ineligible. HHS, as of July 1984, has not made a decision on one state. (See app. III for the fiscal year 1981 compliance review results by state.)

For states that certified their fiscal year 1981 eligibility, HHS conducted fiscal year 1981 and 1982 compliance reviews simultaneously. However, the Department decided that no state could be found ineligible for fiscal year 1982 as a result of a review conducted before September 30, 1982. HHS reasoned that since the sample of foster care cases used for the 1981 and 1982 reviews was identical, the sample did not include any children entering care after the 1981 sample was selected. Thus, the 1982 sample was not a statistically valid one. Despite this, HHS allowed findings of substantial compliance to stand for fiscal year 1982. HHS withheld decisions for the remaining states and reviewed most of them again during fiscal year 1983. Of 17 states for which fiscal year 1982 eligibility decisions were withheld as a result of the 1982 compliance reviews, 11 were subsequently approved, 4 denied eligibility, and 2 others have not been reviewed.

Problems with compliance reviews

HHS compliance reviews have resulted in some states receiving incentive funds when there was reason to question whether they had met the section 427 provisions. Two factors contributed to this. First HHS allowed the states to implement as few as 13 of the 18 elements identified from the act to be included in case plans, periodic reviews, and dispositional hearings and still be in compliance. Second, the compliance review guidelines ultimately adopted by HHS provided little specific guidance to reviewers in determining if states' case review systems met the act's requirements.

The 18 case review system elements identified from section 427 were intended to strengthen state foster care programs. Public Law 96-272 gives the Secretary discretion to determine how many cases in each state must meet each of the act's requirements but does not permit the omission of the elements specified in the law. Thus, HHS' decision to allow cases to comply with only 13 of the 18 elements has no basis in law. The mandatory nature of these requirements was later confirmed in a federal court decision upheld in appeal.[2]

Under HHS' definition of acceptable case records, a state could consistently not institute any five of the elements and still be in compliance. For example, the following comment was made by an HHS compliance review team about one state found to be in substantial compliance:

> "P.L. 96-272 prescribes the elements that go into the formulation of Case Plans and the six months review process. Although we found both Case Plans and Reviews in the records, we did not find all elements prescribed by law."

Reviewers for another state found by HHS to be in conditional compliance commented as follows:

> "Safeguards dealing with notification to parents of changes in placement, hearings and appropriate persons serving on administrative reviews were absent in many cases. Since thirteen of the eighteen safeguards were needed to assure acceptance the state was not penalized on this finding but it does represent a weakness the state should address."

The following comments were made by reviewers of a third state found to be in substantial compliance:

> "The State policy is permissive on the involvement of parents in the review process, but little evidence was found to suggest that the parent's participation was actively sought or encouraged."

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[2] Lynch v. King, 550 F. Supp. 325 (D. Mass. 1982), affirmed, 719 F. 2d 504 (1st Cir. 1983).

. . . . .

> ". . . we also found that State practice did not unfailingly protect certain elements of due process--specifically participation of the parent and the presence of disinterested parties--in periodic reviews."

In addition to adopting a level of acceptability that did not require that the states be in compliance with all the requirements of the act, HHS' final compliance review guidelines lacked specificity and provided little clarification of the act's provisions.

HHS developed two sets of section 427 compliance review guidelines for its regional offices to use to determine if states had satisfied the requirements. The first guidelines, issued in draft form in April 1982, contained detailed interpretations of the section 427 elements. While the compliance review guidelines did not have the force of regulation, they listed criteria HHS used to determine if states were eligible to receive incentive payments under title IV-B. The revised guidelines, issued in June 1982, were less specific than the original guidelines and allowed states broad discretion in interpreting the section 427 requirements. Some regional offices provided the guidelines to states to prepare them for the reviews.

Besides explaining the methodology for performing the compliance reviews, the April 1982 guidelines provided specific definitions for the section 427 requirements. For example, concerning inventories, case plans, and dispositional hearings, the guidelines stated:

--The inventory must be a full validated accounting for all appropriate cases. A computer printout of such children is, by itself, a list and not an inventory as indicated by the term "conducting an inventory." The inventory process should correct and update the state's files.

--A case plan is a written document that includes a discussion of the type and appropriateness of placement and the services that will be provided to the child, parents, and foster parents. The case plan may not be an undifferentiated series of documents, case files, or narrative entries that disjointedly contain case plan elements in disparate time frames.

--A dispositional hearing is a review of a child's status at a reasonable period after placement and after the case plan has been in effect. Its purpose is to determine the child's future status. It should not be confused with other court proceedings, which may be labeled dispositional hearings, but deal with initial placement or custody of the child or other issues related to the initial placement.

Revised guidelines issued on June 3, 1982, were less specific and provided less guidance than the original guidelines. According to the June guidelines, the revisions were made because HHS reasoned that "as the states had no basis for determining their own eligibility other than the statute itself, the Department cannot now impose any more specific . . . standards or criteria beyond those identified in Pub. L. 96-272."

For example, in defining the requirements for an inventory, a case plan, and a dispositional hearing, the June guidelines refer to and quote sections 427(a)(1), 475(1), and 475(5)(c) of the act. The guidelines paraphrase the sections' requirements and provide checklists of these requirements for the compliance teams to use in performing the reviews; however, the guidelines do not expand on the statute's provisions and do not give examples of acceptable or unacceptable practices. For example, while the April guidelines stated that a case plan could not be an "undifferentiated series of documents, case files, or narrative entries," the June guidelines simply stated that "the form of a case plan may vary from state to state."

HHS compliance reports to states notifying them of their eligibility to receive incentive payments provide evidence of how some states that had not implemented all of the section 427 requirements had satisfied enough of the requirements to be considered in compliance by HHS. For example, HHS made the following comments in its report on eligibility about one state found to be in conditional compliance:

--Files of many children placed in private child care agencies did not meet the periodic review requirement, particularly those placed out of state.

--Files of some children under jurisdiction of the probation department did not meet dispositional or periodic review requirements.

--Records reviewed indicate that voluntary placements and developmentally disabled children, in most cases, did not have dispositional hearings and periodic reviews.

HHS had the following comments about another state found to be in conditional compliance:

--Policy manual needs to clearly address that periodic reviews are still required when a child is in long-term foster care, treatment center care, or other institutional care as a permanent or long-range plan.

--Subsequent inventory update should include the reason for and necessity of the current placement. These data are not captured specifically in the original inventory data collection instrument.

--Case plan goals should be added to the automated statewide information system.

--The manual should be revised to clearly require that at least one of the participants in a periodic review be a person "not responsible for the case management of, or the delivery of services to, either the child or parent(s), who are the subject of the review."

--Case plans, case plan updates, periodic reviews, and social services field representatives' reports could be improved in format, clarity, and coverage of Public Law 96-272 requirements.

The report on eligibility for a state determined to be in substantial compliance contained the following observations:

--There was a lack of consistency in the caseworkers' ability to develop treatment plans to meet client needs.

--The compliance reviewers were unable to adequately review services provided to parents because the information was in records not available for review.

--The practice of carrying out periodic reviews was very weak.

--There was no mandatory 6-month review required for children in basic foster care.

--Reports on some of the dispositional hearings did not contain evidence that the four requirements were considered.

--In most cases, there was no evidence of dispositional hearings following the initial one.

Another state determined to be in conditional compliance had the following comment in its report:

> "Data from the review indicates that a child typically had only one dispositional hearing. This hearing usually occurred immediately after the adjudication or within a day or two of placement. In general, few of the children's records sampled indicated that other dispositional hearings were held to determine his status as intended by the Law."

HHS' ACTIONS TO RECOVER FUNDS PAID TO STATES FOUND INELIGIBLE

In a January 5, 1984, letter to us, HHS stated that it has taken steps to recover funds from states found ineligible during fiscal year 1981 compliance reviews and from states that withdrew their certifications of eligibility. The Department has sent letters to these states asking them to return the money. In addition, HHS is now requesting states that withdraw their certifications to repay the funds within 30 days and is including in the letter of final decision informing states of their ineligibility a requirement that funds be repaid promptly.

As of January 31, 1984, HHS had recovered funds from one of the five states that had withdrawn their fiscal year 1981 certification and had not recovered funds from any of the three states and Puerto Rico found ineligible. Of the $3.28 million in incentive funds paid to the nine states that either failed the fiscal year 1981 compliance reviews or withdrew their certifications for that year, $2.88 million is still outstanding. Depending on the outcome of a compliance decision yet to be made for one state, the amount could rise to $4.77 million. In addition, one state found ineligible transferred $225,153 from its title IV-E program to its title IV-B program. This transfer was permissible only because the state had certified its compliance with section 427(a).

States found in conditional compliance for fiscal year 1981 were allowed to keep that year's section 427 funds and were allowed an additional year to meet the substantial compliance level. During fiscal year 1983, HHS performed compliance reviews in these states to determine the states' fiscal year 1982 eligibility. Of the seven states found conditionally in compliance for fiscal year 1981, four were subsequently found eligible for fiscal year 1982 incentive funding and three were found ineligible.

CONCLUSIONS

In our opinion, the 1980 act is specific in its intent that states are required to implement all the section 427 elements listed in the act before qualifying for any incentive funds and

HHS must enforce these requirements. HHS' decision to permit states a great deal of flexibility in the administration of section 427 requirements and the corresponding absence of explicit regulations to guide them in their implementation efforts have placed both states and HHS in a difficult position regarding compliance and enforcement. By HHS not being precise in its regulations, states can make and have made varying interpretations of the act's requirements that are inconsistent with its legislative history and a recent federal court decision.

The confusion, which both our review and subsequent HHS compliance reviews showed existed during the first year of section 427's implementation, is likely to continue in the absence of explicit HHS regulations for the states to follow on how to meet each of the act's requirements. Further, HHS needs to develop more specific guidance for its reviewers to use in determining whether states are in compliance with these requirements and are, therefore, eligible for incentive funds.

HHS agrees with the need for more detailed regulations and is revising its regulations. HHS does not, however, agree with our position that all the act's elements are requirements that must be implemented in individual cases before a state becomes eligible to receive any incentive funds. Our assessment of the act, its legislative history, and an applicable judicial interpretation of the statute (more fully discussed on pp. 26 to 28) leads us to conclude that HHS' interpretation is incorrect. In our view, HHS does not have discretion to allow states to receive incentive funds without having implemented all the act's specific requirements of a case review system.

In our opinion, because of HHS' incorrect interpretation, its compliance reviews should not be viewed as having validly determined that those states that HHS found in compliance were actually meeting all the legislation's requirements. The states that HHS originally found in compliance should be recertified once HHS develops explicit regulations and guidelines for conducting compliance reviews.

HHS is in the process of recovering funds from states it found ineligible under its less stringent compliance guidelines. We agree that these actions are appropriate. We are not suggesting that HHS attempt recovery against any state that met the less stringent criteria or that new regulations be applied retroactively. However, once the regulations are revised, HHS should ensure that certifications by all the states are based on compliance with these new regulations.

RECOMMENDATIONS TO THE SECRETARY OF HHS

We recommend that the Secretary revise the program regulations to provide additional guidance to states as to what is required to implement section 427. At a minimum, the regulations should require that

- --the appropriateness of and necessity for a child's current placement be recorded on the inventory;
- --the data in the statewide information systems be readily available at the state level;
- --case plans, periodic reviews, and dispositional hearings contain all the elements and make all the determinations specified by the act;
- --a dispositional hearing be other than court proceedings dealing with the custody or other issues related to the child's initial placement; and
- --subsequent dispositional hearings be held within a time period established by HHS.

We also recommend that the Secretary direct that

- --compliance review guidelines be conformed to the provisions in the revised regulations and contain specific criteria that HHS can use to ensure that each state has fully implemented section 427 and
- --states wishing to receive section 427 incentive funds (including those that have previously certified) be required to certify their compliance under HHS' revised regulations.

HHS AND STATE COMMENTS AND OUR EVALUATION

While the Department agreed with our primary recommendation to revise program regulations to provide additional guidance to states regarding what section 427 requires, HHS disagreed with our interpretation of some of the act's requirements and generally does not believe the regulations should be as specific as we recommend.

Four states--Colorado, Maine, Maryland, and Virginia--also commented on our report.[3] Three of the four expressed concern over our position regarding HHS' recovery of funds from ineligible states. These and other HHS and state comments on our draft are discussed more fully in the following sections.

GAO's scope and methodology

In its January 5, 1984, letter commenting on our draft report, HHS made several observations about our scope and methodology. HHS noted that Public Law 96-272 is complex and the initial year of any program's implementation is atypical. HHS stated that reviewing states' implementation of the act using fiscal year 1981 data is of limited usefulness in 1984. According to the Department, states have made great progress in implementing the act's requirements since 1981.

Our scope and methodology are described in detail in chapter 1. The information in appendix I and briefly summarized in chapter 2 concerning the states' implementation of the section 427(a) requirements is based on fiscal year 1981 data (the most recent data available at the time of our visits to the states). However, the remaining information in chapter 2, the data on which our recommendations are based, includes data obtained during 1983 and early 1984 and reflects the current situation in regard to HHS program administration. HHS' comments generally agree with our recommendations concerning the need for more guidance to the states and indicate that such guidance has not yet been finalized. Therefore, we believe that while some of the information in our report is not as current as we would like it to be, it is still relevant. In addition, several of our recommendations are based on an interpretation of the law, which has no relation to the age of our data.

We agree with HHS that the act is complex. That is why we and three of the states that commented on our report believe that HHS needs to provide additional guidance. HHS' position that the initial year of implementation of the act is atypical does not permit it to waive statutory requirements. The act does not provide for a gradual move toward compliance by the states but requires that the provisions of section 427(a) be implemented and operating before a state is eligible for incentive funds.

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[3] South Carolina, Tennessee, and Utah were given the opportunity to comment on our report but did not do so.

HHS also stated that because our review included Maine, which had withdrawn its fiscal year 1981 section 427 certification on September 17, 1982, our results were skewed. We disagree. Our fieldwork in Maine was completed in August 1982, the month before Maine's withdrawal and while the state's certification was still in effect. In addition, HHS had accepted Maine's self-certification in September 1981 and had awarded the state $273,157 in section 427 funds. Because one objective of this review was to determine how selected states had implemented the section 427 requirements, including Maine in our review was proper.

Additionally, HHS noted that because our case file review can be considered a test of a state's foster care system but not as being representative of the entire state, our findings are anecdotal. We disagree. We compared each state's policies and procedures with the section 427 requirements. This enabled us to identify, at the state level, strengths and weaknesses in each state's foster care system. In the two jurisdictions in each state that we visited, a statistical sample of cases was reviewed. In six of the seven states, we visited the jurisdiction with the largest foster care population, and in the other state, Tennessee, we conducted work in the county with the second largest foster care population.

Appropriateness and necessity determination should be recorded on the inventory

HHS disagreed with our recommendation that the appropriateness of and necessity for a child's current placement be recorded on the inventory. The Department believes that states may opt to make these determinations when the inventory is made, when the child's case plan is being developed, or when the first periodic review is conducted.

Our interpretation, supported in the legislative history, is that the inventory and required determinations are not separate elements that are only marginally related. The inventory and required determinations are essentially one and the same. According to the legislative history, the required determinations had to be made as part of the inventory and had to be done for each child. The purpose of the inventory was not only to determine where these children are but also to find out what is happening to them.

HHS' interpretation of the inventory requirement would allow the required determinations to be made as long as 6 months after the physical inventory was completed. We believe this interpretation ignores the structure and legislative history of the law. Additionally, although the Secretary of HHS has some discretion in determining what satisfies the requirements of a statewide information system, case review system, and service program, the Secretary does not have the same discretion as it applies to the inventory requirement.

Data in statewide information system should be readily available at the state level

HHS disagreed with our draft report's recommendation that the Secretary should revise the regulations to require that data in the statewide information system be available at a single location. According to the Department, a statewide information system which maintains required information at the county level satisfies the act's requirements as long as the state can "readily determine" the information.

We essentially agree with HHS on this point. HHS may conclude that our concern is the physical location of the statewide information system. However, we agree with HHS that this information only need be "readily determinable" at least at a single state location, for example, by retrieving information from a computer bank linked together throughout the state. Although we and HHS agree on this point, the report recommends that HHS issue guidance in this area. We do so because the statutory terms "statewide" and "readily determinable" are so vague that they could easily be misinterpreted or abused.

Section 427(a)(2)(A) explicitly provides for establishing a "statewide" information system. According to the legislative history, such a system was intended to accomplish two things. First, it was supposed to centralize specific information and thus make it readily available. The information system was designed to provide a permanent mechanism for tracking children in foster care and provide information on how well a state is moving children in and out of foster care.

Second, information gathered from the statewide system was expected to be fed into a national foster care information data gathering and analysis system established under section 201 of the Child Abuse Prevention and Treatment and Adoption Act of 1978 (Public Law 95-266). With both of these systems in operation, the Congress anticipated that the whereabouts of foster children could be determined on both a state and national level.

Acceptable cases should meet all the act's requirements

In commenting on our draft report, HHS stated it does not believe the act requires acceptable cases to contain the 18 case review elements it identified from the act. HHS does require that a state's administrative procedures provide for implementing all 18 elements but, in reviewing its sampling of case records, considers a case to be acceptable if it included any 13 of the 18 elements. HHS interprets the act to provide the Secretary with discretion to allow states to omit some of the case review system requirements. The HHS response supports this view by noting that section 427 requires states to implement and operate the requirements "to the satisfaction of the secretary . . . ."

The issue is whether the HHS Secretary, in determining that a state is eligible for additional funding under section 427, legally has the discretion to excuse the state's not operating any 1 of the 18 case review system elements set forth in the act. HHS maintains that the statute affords the Secretary considerable discretion and that the discretion permits the Secretary to choose which and how many case review system elements to impose upon the states. A more limited view of that discretion, however, is that, while the Secretary must accept all 18 elements as required, he or she has discretion to determine the percentage of acceptable cases needed to satisfy all 18 elements. The alternative and more expansive version advanced by the Secretary has recently been rejected by a federal district court's interpretation of the statute, which resulted from a case in Massachusetts, Lynch v. King, concerning foster care.

In its analysis of section 427,[4] the court reviewed the entire context of title IV-B of the act (which includes section 427) and stated:

> "As defendants point out, parts of Title IV-B appear to be intended to encourage the states, in cooperation with the Secretary of HHS, to establish and extend the provision of social services calculated to ensure permanent and proper homes for children. . . . It may be that certain provisions of Title IV-B do not impose obligations on the states, but rather '[speak] merely in precatory terms.'"

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[4] For reasons not here relevant, the features of 427 treating dispositional hearings were not considered by the court.

> "Whether or not Congress intended only to set goals for the states in other provisions of Title IV-B, it is clear that in section [427(a)(2)(B)], Congress imposed the case review requirements of section [475(5)] as a condition to the states' receipt of [additional] federal funds . . . ." (550 F. Supp. at 349, 350.)

The only language of section 475 possibly limiting the obligatory terms of the act, observed the court, is that which provides that a state shall not be eligible, unless the state's case review system operates "to the satisfaction of the Secretary." The court explained that this phrase

> ". . . cannot be read to limit the existence or scope of the obligation imposed on the states. To interpret the phrase 'to the satisfaction of the Secretary' as transforming an otherwise clear obligation to comply with the requirements of section [475(5)] into a mere duty to achieve whatever degree of conformity with those requirements is needed to satisfy the Secretary would be contrary to the Congressional purpose. The legislative history of enactment of section [427(a)(2)(B)] makes clear that Congress meant to condition the receipt of supplemental funds on compliance with the requirements of section [475(5)]."

The court goes on to explain that the case review requirements

> ". . . are clearly defined. Unlike many statutory directives involving exercise of discretion for which specific expertise may be required, the case review requirements are sufficiently concrete to be readily capable of enforcement by this court."

The extent of the case review requirements are listed in the court's order and include all those elements listed in the act pertaining to "case plans" and "periodic reviews." In total, the court required each of the 15 elements of section 427 that it considered. Although dispositional hearings, which include three additional elements, were not germane to its decision, we believe a necessary and obvious corollary of the court's decision is that all elements related to a dispositional hearing are similarly mandatory and not within the Secretary's discretion.

In the Lynch decision, the court was examining, for the most part, the same case review system requirements against which we conducted our audit. The court, although it did not have before it the "13 of 18" compliance review system established by HHS, in effect repudiates the HHS rationale upon which that review system is based. We find the court's analysis and conclusions persuasive. States may become eligible for additional foster care funding under section 427 only after they have implemented each of the 18 elements of a case review system listed in the act. The discretion afforded the Secretary by the act does not permit him or her to provide incentive funding to states that fail to operate any 1 of the 18 elements of a case review system set forth in the act.

HHS' response also argues that children are better served by allowing states to obtain section 427 incentive funds while gradually increasing their level of performance in terms of the statutory elements. In this regard, it asserts that the penalty of a fund cutoff would be disproportionate to the failure to meet the requirements. The response illustrates this point by a hypothetical example in which a state's periodic case reviews were 1 day over the 6-month statutory limit.

We have several problems with these arguments. We assume HHS would agree that the children are best served by actually receiving as many of the protections specified in the statute as possible. HHS apparently believes that its gradual approach is the best way to achieve this objective. However, we believe the Congress has already made a judgment that states must meet all specified protections in order to qualify for any incentive funds. The _Lynch_ decision supports this interpretation.

The example cited by HHS is not relevant since it does not reflect how HHS' compliance policy actually operates. Rather than granting narrow waivers in exceptional circumstances (e.g., the case reviews are 1 day late), the HHS policy allows blanket and indiscriminate noncompliance with any five statutory protections.

Colorado was the only state to comment on this recommendation. Colorado, like HHS, does not believe it is reasonable to expect states to fully implement section 427 if "fully implement" means 100 percent at all levels of detail. (See app. V.) We agree. As discussed above, we do not believe that 100 percent of the _cases_ in a state must meet all of the act's requirements.

Dispositional hearings should occur after the case plan has been in effect

HHS agreed that dispositional hearings are not intended to address a child's initial custody, but rather the child's future status after the case plan has been in effect for a time. HHS interpreted our proposed recommendation on dispositional hearings to require that it establish a minimum time period after placement before a dispositional hearing could be held. We did not intend to propose such a requirement and have clarified our recommendation.

Maine commented that it could not find support for our interpretation that the dispositional hearing was intended to be held after a child's case plan had been in effect for a reasonable period or was intended to serve as a catalyst for permanent placement. According to Maine, the original interpretation of the dispositional hearing seemed to require that no child remain in foster care for any extended period without a judicial review of the placement. The state believes the continued disagreement over the interpretation of this requirement highlights the need for clear and consistent HHS guidance. (See app. VI.) Maryland's comments indicate disagreement with our definition of dispositional hearings. (See app. VII.)

The Congress required that dispositional hearings be held no later than 18 months after the original placement to aid states in making decisions regarding a foster child's long-term placement and to ensure the child does not become lost in the foster care system. The original court hearing committing the child to custody would not qualify as a dispositional hearing even if it occurred after the child had been placed in foster care because the child's long-term placement could not be determined at that time. HHS agrees.

Subsequent dispositional hearings should be held within specified periods

While HHS agreed that subsequent dispositional hearings should be held within clearly established periods, it believes the periods should be established by the states. HHS' May 23, 1983, program regulations require states to establish "reasonable, specific, time-limited periods" for conducting further dispositional hearings. This is in accordance with the administration's policy of minimal regulations and of allowing more state flexibility.

Four of the seven states had not, at the time of our visit, established specific periods within which subsequent dispositional hearings should be held, and one state required such hearings every 42 months. While at least two of these states have changed their policies since our visit, we believe HHS needs to ensure that states hold subsequent hearings within a period it considers reasonable. States need to know what HHS considers "reasonable, specific, time-limited periods" in order to avoid future misunderstandings.

All certified states should be reviewed in accordance with revised criteria

HHS agreed with the proposal in our draft report that once the program regulations and compliance review guidelines have been revised, all certified states should be reviewed in accordance with the revised criteria.

HHS should promptly recover funds from ineligible states

HHS agreed with a proposed recommendation in our draft report that it promptly recover funds from states it found to be out of compliance with the section 427 requirements. HHS said it has taken steps to recover funds from states that have been found ineligible or have withdrawn their certifications and has instituted procedures to recover funds promptly in new cases. We have, therefore, withdrawn our proposed recommendation.

The four states that commented on our draft report disagreed with our proposed recommendation. Colorado stated that in view of inadequate and inconsistent HHS guidance to states that certified in good faith and without final regulations in force, it would be unjust and inappropriate to take fiscal sanctions against states found ineligible based on new compliance criteria. (See app. V.) Maine suggested a moratorium on all adverse actions by HHS until it sets forth rules and regulations. (See app. VI.) Maryland believed that our proposed recommendation was a "punitive" and "non-constructive approach." (See app. VII.) Virginia commented that states should not be penalized for confusion created by HHS. (See app. VIII.) Three states suggested that instead of returning money, they be allowed to take corrective steps that would bring them into compliance with the section 427 requirements.

We agree that states and HHS should work together to identify and correct weaknesses in their foster care programs. However, the Congress intended that states that had successfully implemented the section 427 requirements be rewarded with additional funds. We are not suggesting that HHS attempt recovery against any state that met the less stringent criteria, only that recoveries be sought from those states that may, upon future certification, be found not in compliance with the revised regulations.

RESULTS OF GAO'S REVIEW OF SEVEN STATES' IMPLEMENTATION OF THE SECTION 427 REQUIREMENTS

This appendix describes the results of our review of each state's foster care policies and procedures and of case files in two jurisdictions in each state during the first year of implementing the section 427 requirements. It shows that much confusion existed among the states about how to implement certain of these requirements. In the absence of specific guidance being developed by HHS, we used the provisions of the act and its legislative history in reviewing the states' performance in meeting section 427 requirements.

APPROPRIATENESS AND NECESSITY OF FOSTER CARE PLACEMENTS NOT ALWAYS DETERMINED DURING STATE INVENTORIES

Section 427(a)(1) of the Social Security Act requires states seeking foster care incentive funding to have

> "conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory, and determined the appropriateness of, and necessity for, the current foster placement . . ."

States were to determine the appropriateness and necessity of placements during the inventory and to record the determinations at the time of the inventory. Two states in our review, Colorado and Utah, provided written documentation that they had determined the appropriateness of, and necessity for, each foster care placement. Officials in the other states said they had made the appropriateness and necessity determinations, although they did not have documentation that we could use to verify they had made the required determinations.

Colorado conducted its inventory in accordance with the section 427 provisions. The inventory showed that as of July 31, 1981, 2,396 of the foster care population of 4,598 had been in foster care longer than 6 months. The state also determined and recorded the appropriateness of and necessity for each child's placement.

Maine officials believed routine semiannual caseworker reviews of all children in foster care satisfied the act's inventory requirement. In a letter to HHS, Maine's Director of the Bureau of Resource Development wrote that the reviews comply "with the Inventory clause through this mechanism, and that this periodic review precludes the necessity for separate, additional inventory of all cases." To supplement the process, however, Maine generated a list of all foster care cases on October 1, 1981, and, using that as a base, indicated the appropriateness and necessity of each current foster care placement.

Because of HHS concerns about whether Maine's October 1, 1981, inventory had provided a complete and accurate list of all children who had been in foster care for at least 6 months and concerns that it had not satisfied the appropriateness and necessity of placement requirements, Maine conducted a second inventory of children in foster care as of July 1, 1982. This second inventory was supposed to enable the state to determine which children had been in care for at least 6 months. While conducting the 1982 inventory, the state intended to require caseworkers and supervisors to indicate the appropriateness and necessity for each placement.

According to Maryland officials, the state foster care system essentially shut down for 2 days while caseworkers completed inventory forms for all children in foster care. As of April 1981, 8,287 Maryland children were in foster care. The state certified to HHS on July 29, 1981, that it had conducted an inventory as well as to having met the other provisions of section 427(a).

The inventory forms did not contain information about the appropriateness and necessity of each child's placement. Maryland officials said they determined the appropriateness and necessity of placements by analyzing aggregate placement data gathered during the inventory. The state also hired a contractual staff from July 1982 through July 1983 to determine, among other things, the appropriateness and necessity of placements.

South Carolina conducted its foster care inventory on July 30, 1981. Since foster care inventory data were maintained in the state's Foster Care Tracking System, the state printed the historical data base on each child from the system. As of July 30, 1982, 3,350 children were in foster care in South Carolina.

The state did not determine the appropriateness and necessity of each child's placement at the time the inventory was conducted. According to a state official, caseworkers and their supervisors in each county addressed the appropriateness and necessity requirements when data were initially entered into the tracking system. However, no specific information on the inventory printout documents this determination. According to the state official, HHS had agreed that the state's method of determining appropriateness and necessity of placement met the act's requirement.

Tennessee also used the data already in the state's information system to conduct its inventory. The information was printed and sent to local caseworkers and supervisors for review. According to a state official, these reviews served to verify the data in the system and to determine the appropriateness and necessity of each child's placement, although this determination was not documented at the state office or at the two counties we visited.

Utah conducted its inventory in accordance with the act's requirements. The inventory, conducted on July 6, 1981, indicated that 925 Utah children were in foster care. For all these children, caseworkers completed review forms that contained information on the appropriateness and necessity of each child's foster care placement. Caseworkers were also asked to describe the services necessary to achieve the goal that had been established for the child.

Virginia generated a special report from its automated foster care information system which showed that 8,183 children were in foster care as of June 30, 1981. The report contained case names, caseworker numbers, placement types, goals, birthdates, current custody dates, and supervisory review dates. According to officials in the two Virginia localities we visited, the state did not ask the localities to determine the appropriateness and necessity of each child's placement when the state conducted its inventory. State officials, however, told us that a July 29, 1981, directive to localities required each child entering foster care after July 31, 1981, to have an administrative review at least every 6 months to determine, among other things, the continuing need for and appropriateness of the placement. This directive does not cover children who were in foster care for at least 6 months preceding the date of the inventory as required by the act.

STATEWIDE INFORMATION SYSTEMS GENERALLY MEET THE ACT'S REQUIREMENTS

At the time a state certified that it met the requirements of section 427(a), it was supposed to have a statewide information system, as defined by section 427(a)(2)(A), from which the status, demographic characteristics, location, and placement goals for each child who had been in foster care within the preceding 12 months could readily be determined. All seven states' information systems contained all of the information required by the act. Except for Maryland, the information in each state's system was readily available at the state office. In Maryland the required information was available at local offices. Five of the states had automated information systems, Maine had a partially automated system, and Maryland was developing an automated system.

In Maryland local social services departments did not submit information to the state, but were responsible for assuring that the required information was centrally located within the local department. Since information on foster care was not consolidated at the state office, the state had to request needed information from local departments. In the first stage of developing its automated system, Maryland identified information for all individuals receiving social services, including foster care, and computerized this information in a master file. In the second stage the system will contain information relating specifically to child welfare.

Maine's information system contained all of the information required by section 427(a)(2)(A). The state operated an automated Social Services Delivery System, which was a segment of a larger, computerized Management Information and Control System. The system provided a monthly list of children in the state's care and included, in addition to the section 427(a)(2)(A) information, such information as the types of direct services provided by caseworkers. Department officials expected that the system soon would also contain, among other things,

--due dates for administrative case reviews and dates completed;

--the number, types, and locations of foster placements; and

--results of judicial reviews.

Meanwhile, such data were available manually.

The other five states had fully automated information systems. Colorado's statewide information system generated a variety of reports, which, according to the director of the state's Division of Social Services, were generally used to (1) generate data the state needed in its dealings with the legislature and (2) obtain data on how counties were performing. Each of Colorado's 63 counties submitted a quarterly standardized service report to the state. The form included such information as

--demographic data,

--the child's legal status,

--any impairments the child had,

--the problem the caseworker was attempting to resolve, and

--the services provided.

South Carolina's automated Foster Care Tracking System, which began operating on July 1, 1980, contained the information required by the act, and the information was readily accessible to both state and county offices. The state's 46 county offices input data into the tracking system by computer terminal and had access to the cases they managed, while the state had access to data on all foster care cases. The state used the tracking system to determine caseload and permanency trends and to monitor case activity. The state sent various monthly reports to the county offices.

On October 1, 1978, Tennessee implemented a statewide information system that contained the act's required elements. All 95 Tennessee counties input data into the system. The information was readily accessible to state, regional, and county offices from numerous monthly, quarterly, and annual reports generated by the system.

Utah automated its information system in 1973 and completed a redesign of the system as of May 1, 1982. The new information system produces quarterly individual district office reports as well as statewide summary reports for the state office. The reports are used to

--prepare annual budgets and work programs,

--monitor local foster care programs, and

--provide management controls.

The information system tracked each child through the state's service delivery system. The information system contained a child's foster care placement history, including the number of placements the child had, the date the written treatment plan was completed, and the date of each judicial hearing and administrative review. In addition, the system tracked the progress of each foster care case by service objectives, including the dates the objectives were set, the dates they were completed, and the outcomes.

Virginia's automated information system contained all of the required information for each child in foster care. Virginia automated its reporting system when state legislation required the establishment and maintenance of a foster care tracking system in 1977. Under this foster care information system, the local social services agency completed an input document within 2 weeks of a child's commitment to a local agency. Quarterly updates were completed on all active foster care cases. The state used the information from the input documents to produce case management reports for each locality. These reports included such information as

--a list of each worker's cases,

--maintenance payment records,

--review dates, and

--characteristics of the children available for adoption.

Virginia was replacing its foster care information system with a new system which will contain client demographics and program data for all state social services, including foster care.

NOT ALL STATE CASE REVIEW SYSTEMS COMPLIED WITH THE ACT

Section 427(a)(2)(B) requires states to have, for each child in foster care, a case review system consisting of three elements:

--a written case plan designed to achieve placement in the least restrictive (most family-like) setting,

--reviews at least every 6 months of a child's status in foster care, and

--a dispositional hearing within 18 months of a child's original placement in foster care, and periodically thereafter, which determines the child's future status.

Written case plans usually prepared

The act requires that a written case plan contain at least:

--A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the responsible agency plans to carry out the voluntary agreement entered into or the judicial determination made with respect to the child.

--A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home. The services provided should facilitate the child's return to his or her own home or the child's permanent placement. The case plan should address the child's needs while in foster care and include a discussion of the appropriateness of the services that the child has received under the plan.

In our case file review, we determined whether written case plans contained all of these elements. The act's legislative history identified a case plan as an identifiable document or a series of related documents to which someone using the case file could easily refer to obtain the required information.

Each jurisdiction we visited in five of the seven states prepared written case plans for foster children that satisfied the act's requirements. Two states, Maryland and Maine, did not prepare written case plans for foster children. To facilitate our work in Maryland, state officials directed the two localities to prepare written case plans for the case files in our sample. At the time of our visit, no other cases in the state had written case plans. The following table contains the results of our case file review with respect to written case plans.

	Cases requiring written case plans	Cases having written case plans meeting all the act's requirements[a]
Colorado:		
Denver Co.	47	44
Larimer Co.	47	47
Maine:		
Cumberland Co.	91	0
Lincoln Co.	37	0
Maryland:[b]		
Baltimore City	91	76
Dorchester Co.	51	46
South Carolina:		
Aiken Co.	48	48
Greenville Co.	80	79
Tennessee:		
Bradley Co.	49	46
Davidson Co.	79	78
Utah:		
Salt Lake Co.	64	64
Weber Co.	36	36
Virginia:		
Richmond City	98	92
Rockingham Co.	57	55

[a] If a case plan was missing one of the elements required by the act, we did not consider it an acceptable case plan. Some of the case plans in our sample contained most, but not all, of the case plan's required elements.

[b] Baltimore City and Dorchester County officials had prepared written case plans for the files of those children in our sample.

Case plans as defined by the states ranged from virtually a client's entire case file, which in our opinion is not what the act intended, to a concise, complete summary of the important elements of a child's case. At least three states--Colorado, South Carolina, and Virginia--submitted the written case plans to courts or administrative review panels for use in the periodic reviews required by the act.

As of May 1982, Maryland had not implemented a system to prepare case plans for foster children. According to state officials, shortly after we completed our audit work in Maryland, a case plan form was put in use statewide.

In Maine, caseworkers did not prepare separate written case plans; instead the plan elements were included in the caseworker's permanent, ongoing narrative describing the case. Maine officials disagreed with our interpretation based on the act's legislative history that a written case plan must be a separately identifiable document. According to the state's letter commenting on our draft report, Maine has now established such a separate document.

Colorado required that written case plans be separate, identifiable documents. The plans took the form of written narratives which caseworkers could submit to the local courts every 6 months for review. The state required the plans to

--describe the type of facility in which a child is placed and justify the appropriateness of the placement,

--set goals and describe significant transactions involving the child,

--discuss the circumstances that necessitated the placement and the improvements needed for the child to return to his or her home, and

--describe the services to be provided to the child or the parents.

In South Carolina caseworkers were required to develop case plans for all children in foster care. The written case plan was a standard form which was updated every 6 months and used in the periodic reviews.

Tennessee policy required caseworkers to prepare written case plans for each child in foster care. The state developed comprehensive guidelines for developing plans and working with children and parents to accomplish goals.

Utah required each child in the state's custody to have a written case plan. Caseworkers were required to prepare the plans within 60 days of the foster care placement. Each plan covered a 3- to 6-month period. The plan identified objectives and tasks for the parents to achieve related to the goal of permanency for the child. It also included steps to be taken if goals were not completed as outlined.

Virginia foster care policy required a written case plan for each child in custody. Caseworkers were required to prepare plans for each child within 60 days of the child entering care.

The agency was supposed to submit the plan to the court, which in turn would send the plan to the

--attorney for the child,

--the child's parents, and

--any other persons whom the court deemed to have a proper interest.

Periodic reviews not always conducted

The act requires states to review the status of children in foster care at least every 6 months to determine, among other things,

--the continuing necessity for and appropriateness of each placement,

--the extent of compliance with the case plan, and

--the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care.

The periodic review can be by either a court or an administrative panel. The act defines an administrative review as a

> "review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review."

In our case file review, our criteria required an acceptable periodic review to contain all applicable elements listed above. If an administrative review panel conducted the review, the review had to be open to the parents and an independent party had to be involved.

The extent to which jurisdictions in our sample had implemented the periodic review requirements varied greatly, as illustrated in the table below.

	Cases requiring periodic reviews	Cases having periodic reviews meeting all the act's requirements[a]
Colorado:		
Denver Co.	43	31
Larimer Co.	38	32
Maine:		
Cumberland Co.	88	12
Lincoln Co.	37	0
Maryland:		
Baltimore City	74	14
Dorchester Co.	31	1
South Carolina:		
Aiken Co.	37	31
Greenville Co.	69	42
Tennessee:		
Bradley Co.[b]	-	-
Davidson Co.	76	25
Utah:		
Salt Lake Co.	58	53
Weber Co.	29	20
Virginia:		
Richmond City	85	3
Rockingham Co.	42	3

[a] To be considered acceptable, a periodic review had to be conducted at least every 6 months, include all of the determinations required by the act, and be conducted by an appropriate court or administrative review panel. Administrative reviews had to be open to the parents, and an independent party had to be involved in conducting the review. Many of the cases in our sample contained some, but not all, of the periodic review's required elements.

[b] In Bradley County we could not determine how many foster children received periodic reviews because the review documents had been backdated at approximately 6-month intervals to as far back as December 1980.

The seven states had developed various systems to periodically review cases in accordance with section 427. Three states--Colorado, South Carolina, and Utah--conducted periodic reviews in accordance with the act in over 60 percent of the cases we reviewed. In the other states foster children received reviews meeting the act's requirements in less than one-third of the cases.

In Colorado, involuntarily placed children received court reviews--that is, court hearings--while voluntarily placed children received administrative reviews. Agency staff not connected with the case served as the "outside" review panel member for the administrative reviews. Occasionally, though, some children did not receive periodic reviews in accordance with the act's requirements. There were two reasons for this. First, state policy required that, if the court issued a decree vesting a child's legal custody in a county, the case was supposed to be reviewed by the courts no later than 3 months after the decree was issued and every 6 months thereafter as long as the county had custody. However, courts sometimes set review dates that were not within 6 months of the last review. Second, although the state certified compliance with section 427 on July 30, 1981, the two counties we visited did not have mechanisms to review voluntary placement cases until early 1982. Court reviews were conducted only in involuntary placement cases. In early 1982 counties established review teams made up of agency staff to review voluntary placement cases.

In 1974 South Carolina established a Children's Foster Care Review Board System, which functioned externally to the state Department of Social Services and which was supposed to review the cases of children who had been in care over 6 months and every 6 months thereafter. The system had 28 local review boards with five members each. Although most of the children in our sample were reviewed in accordance with the act, almost one-third of the cases, for various reasons, had not been reviewed or had been reviewed less frequently than every 6 months. Problems in scheduling reviews with local review boards were the most common reasons that reviews were delayed.

Utah policy required each child in the state's custody to be reviewed every 6 months by the juvenile court, and our case review confirmed that this was generally done. However, according to both state and local officials, some juvenile court judges ordered annual reviews.

As the table on page 41 indicates, the other four states conducted periodic reviews that met the act's requirements in less than one-third of the cases reviewed.

According to a Maine official, when the state certified compliance with section 427 on July 29, 1981, periodic reviews meeting the act's requirements were held in only one of Maine's five regions. Some administrative reviews were held in other regions, but these did not comply with the act because the parents were not routinely invited, an independent decisionmaker was not always present, and the reviews were not always conducted at least every 6 months.

In June 1982, Maine implemented a statewide periodic review system, which the state believed would meet the act's requirements. Each state regional office was responsible for conducting the required 6-month reviews of all foster children and for fulfilling the requirements that an independent person not responsible for the case participate and that the review be open to the parents. As of July 19, 1982, the cases of about 240 children, or 15 percent of the state's foster care population, had been reviewed under the new system. According to a Maine official, however, by June 1983 the state's periodic review system was fully operational and nearly every eligible child had had either an administrative or a judicial review.

Maryland was implementing a Foster Care Review Board System established by the Maryland General Assembly in 1978. The system requires citizen review boards to review the status of children in foster care at least every 6 months. Local agencies without review boards were supposed to have implemented an internal administrative review procedure that allowed for the child's parents to participate in the review process and for the presence of an independent party. A state official estimated that, of the approximately 6,200 children in foster care eligible for periodic reviews, 1,408 had been reviewed as of March 31, 1982, 7 months after the state certified its section 427 eligibility. At that time, 16 review boards were operating, but they were able to review less than one-third of the children eligible for periodic reviews. According to a state official, 13 additional boards were operating by the end of 1982, and an additional 18 boards will be operating by June 1984.

Dorchester County, Maryland, did not have a system to assure that either a court or an administrative panel reviewed the status of children in foster care at least every 6 months. According to the foster care supervisor, at the time of our visit the supervisor and the local director of social services periodically reviewed each foster care case. These reviews were informal, so no written records were kept. No outside person participated in the reviews, and the parents were not invited to attend. Court reviews were not held because, according to Dorchester County foster care officials, the local judge would hear cases only if a change in the child's legal status was involved, and not just to satisfy the act's periodic review requirement. According to the officials, at some time in the future a Foster Care Review Board was expected to be created in the county to conduct reviews.

According to Baltimore City foster care officials, they did not have enough boards to review all the city's foster children, although the city planned eventually to have enough boards to do so. Of the 74 cases we examined in which reviews should have occurred, only 14 had been reviewed in accordance with all the section 427 requirements. Twelve of these cases were reviewed by review boards and two by a court.

A 1976 Tennessee law required local courts to appoint Foster Care Review Boards. As of January 1982, review boards had been established in 49 of 95 counties, accounting for about 81 percent of the state's foster care population. By October 1983, review boards had been established in 89 counties. Until July 1982, Tennessee policy required that reviews be conducted every 6 months during the child's first 18 months of foster care. After that, reviews were not required at regularly scheduled intervals. In July 1982 the state required that reviews be conducted at least every 6 months for as long as a child remains in foster care.

Only 6 children included in our review of 127 case files in two Virginia localities visited had received periodic reviews in accordance with the act's requirements. Before July 31, 1981, state policy required local supervisors or agency directors to review quarterly the service plans of all children in care less than 1 year and of all children considered "high priority" for goal achievement (that is, children who were likely to find a permanent placement) and to review semiannually the service plans of all other children (except those in court-approved permanent foster care, who were reviewed annually). In addition, all service plans were subject to annual court reviews unless the child had been returned home, placed for adoption, or placed in court-approved permanent foster care. The judicial reviews, when they occurred, made the determinations required by the act with respect to each child's case. However, the supervisory reviews did not meet the act's administrative review requirements in two ways. First, no "outside" persons were involved in the reviews, and second, caseworkers did not notify parents of their right to participate in the reviews.

Effective July 31, 1981, Virginia policy required periodic reviews to be held in accordance with the act's requirements. At the time of our visit in June and July 1982, the state had not implemented an administrative panel review system that would satisfy the section 427 requirements.

Dispositional hearings not generally held

The law requires states to provide each child with a dispositional hearing no later than 18 months after the child's original placement and periodically thereafter during the child's stay in foster care. The hearing is intended to determine the child's future status--for example, whether the child should be returned to the parents or be placed for adoption. The hearing can be conducted either by a court or by an administrative body appointed or approved by the court.

As shown in the following table, two of the seven states--Colorado and Utah--consistently provided the required dispositional hearings.

	Cases requiring dispositional hearings	Cases having dispositional hearings meeting all the act's requirements[a]
Colorado:		
Denver Co.	43	36
Larimer Co.	39	36
Maine:		
Cumberland Co.	87	22
Lincoln Co.	35	3
Maryland:		
Baltimore City	91	0
Dorchester Co.	41	0
South Carolina:		
Aiken Co.	23	4
Greenville Co.	55	16
Tennessee:		
Bradley Co.	40	11
Davidson Co.	74	43
Utah:		
Salt Lake Co.	64	64
Weber Co.	36	35
Virginia:		
Richmond City	87	0
Rockingham Co.	41	0

[a] To be considered acceptable, a dispositional hearing had to occur no later than 18 months after a child's original placement in foster care, make all of the determinations required by the act, and be conducted by an appropriate administrative body or court. If state law or policy specified how frequently subsequent dispositional hearings were to be held, we determined if states were meeting their own criteria for holding these hearings, since the federal law does not specify how frequently subsequent hearings should be held.

Four states--Maine, Maryland, South Carolina, and Virginia--considered a child's original foster care commitment hearing to be a dispositional hearing satisfying the act's requirements. We do not. We believe the dispositional hearing requirement was intended to strengthen one of the prime weaknesses that the Congress found in the foster care system before 1980--that a child entering the foster care system and remaining in it for even a few months is likely to become lost in the system. The 18-month time limitation was enacted to encourage states to make decisions regarding a foster child's long-term placement and to ensure that the child does not become lost in the system. Thus, the Congress intended the dispositional hearing to serve as a catalyst to find permanent placement for children who had been in foster care for a substantial time. The original court hearing committing the child to custody would not qualify even if it occurred after the child had been placed in foster care because the child's long-term placement would not have been determined at the hearing.

Other problems concerned what categories of children were required to receive dispositional hearings and how frequently "periodic" dispositional hearings had to be held. Also, some states had difficulty scheduling dispositional hearings with their court systems.

Maine officials disagreed with our definition of a dispositional hearing. According to their interpretation, the court hearing granting the state custody of a child qualified as the dispositional hearing. Children usually entered the state's temporary custody under a protective order granted by the court. The next court hearing, typically within 90 days of the first hearing, usually resulted in the state receiving "permanent" custody of the child. The state defined this second hearing as a dispositional hearing. According to state officials, using the state's definition would have resulted in Maine fully complying with the dispositional hearing requirement. In our view, the act requires the child's future status to be determined at some point other than shortly after the child entered care in order that the court may have a sufficient record to address the statutory elements of a dispositional hearing--for example, whether the child should be placed for adoption or continued permanently in foster care. Thus, Maine did not have a system to provide dispositional hearings to foster children within 18 months of their original placement.

Maryland was not providing dispositional hearings to foster children. According to state officials, when the state certified to section 427, it believed that the child's original commitment hearing constituted the dispositional hearing. At the time of our visit, Maryland was deciding how to set up a system to provide dispositional hearings following the original commitment hearing.

South Carolina also interpreted the first full hearing after placement of a child to meet the dispositional hearing requirement, even if this hearing occurred shortly after a child entered foster care. If a child entered care through an emergency order of the local court, for example, the state gained protective custody of the child pending a court hearing involving interested parties. According to state law, this hearing had to occur within 30 days of the child's placement in emergency protective custody. The state considered this to be a dispositional hearing, regardless of how soon after the placement it occurred.

In Tennessee and Colorado certain categories of children were excluded from dispositional hearings. In Tennessee dispositional hearings were supposed to be conducted either by Foster Care Review Boards, which were external to the state's social services system, or by the local courts. For the sampled cases, the hearings frequently were not held. Until July 15, 1982, state policy did not require external reviews for certain categories of cases, including voluntary placements and cases in which the state had received full guardianship of the child. As of July 15, 1982, Tennessee exempted only those children placed for adoption, placed in court-approved permanent foster care, or returned to the physical custody of their parents.

Colorado did not hold dispositional hearings for developmentally disabled[1] children and for children voluntarily placed in foster care. Colorado law excluded developmentally disabled children from court reviews. None of the five developmentally disabled children in our sample had dispositional hearings. In voluntary placement cases, counties must file petitions for a review of the need for placement within 90 days of the child entering foster care. In four cases the courts did not act on these petitions and schedule dispositional hearings.

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[1] Developmental disabilities describe a specific group of handicapping conditions, including mental retardation, cerebral palsy, epilepsy, autism, and severe dyslexia. To be considered developmentally disabled, a person's disability must
--have originated before age 18,
--be expected to continue indefinitely, and
--represent a substantial handicap to his or her ability to function normally in society.

The act does not specify how frequently periodic dispositional hearings must occur, and state requirements for periodic dispositional hearings varied widely. For example, at the time of our visit:

--Colorado required dispositional hearings for all but developmentally disabled children every 6 months.

--Maine required dispositional hearings every 3-1/2 years. Effective September 1983, however, state law requires dispositional hearings every 24 months after the initial hearing.

--Maryland had not established time limits for children to periodically appear before a court after the first 18 months in care. In a December 13, 1983, letter to us, Maryland said that recently revised court rules and procedures require a subsequent dispositional hearing no later than 18 months after the initial hearing.

--South Carolina was in the process of developing a policy to require dispositional hearings every 12 months.

--Tennessee had not developed a policy for periodically holding dispositional hearings.

--Utah required dispositional hearings to be held every 18 months.

--Virginia law stated that hearings should be held periodically after the first hearing or after an interested party had petitioned for a hearing.

Foster care officials in Maryland and South Carolina told us that some courts were generally unwilling to add dispositional hearings to their workload. Also, as discussed earlier, Colorado had difficulty scheduling dispositional hearings with its court system for some voluntary placement cases.

PREPLACEMENT PREVENTIVE SERVICES

Five of the seven states we visited, in addition to certifying to section 427(a), also certified their compliance with section 427(b). Complying with section 427(b) by implementing the section 427(a) requirements and "a preplacement preventive service program designed to help children remain with their families" allows a state to spend title IV-E funds for maintenance payments for children removed from their homes pursuant to voluntary placement agreements (section 472(d)). States that have not certified to section 427(b) can spend title IV-E money only on children who have entered foster care as a result of a judicial determination. The act does not specify which services should be included in a preplacement preventive service program, but the states we visited included a wide range of services in their programs.

For its preplacement preventive service program, Maine targeted distinct groups and decided the types of services each group needed. Under this client-oriented approach, neglected and abused children received first priority. Services supplied by private service providers included homemaker, nutrition, transportation, mental health, and family planning services. Caseworkers provided such services as individual or family counseling and case planning.

South Carolina's preplacement preventive services were provided through three programs:

--The Living Skills Development program is intended to strengthen daily living and coping skills by providing counseling, education, or training to prevent abuse, neglect, exploitation, and individual/family dysfunction.

--The Children, Youth, and Family Counseling program is intended to provide individual or group counseling in a community-based setting to families with children or to children or youths alone who need assistance in dealing with physical/mental illness, alcohol/drug abuse, emotional/family instability, or behavioral problems.

--The Socialization and Developmental Services for Children program is intended to provide a structured program of activities that enhance social, physical, and emotional development and to prevent isolation and delinquent behavior patterns.

South Carolina was developing a policy and procedures manual for delivering preplacement services. The state conducted program reviews of counties and service providers to assure such services were delivered. The program reviews included sampling cases to determine if and how often preplacement preventive services were provided.

Tennessee had a preplacement program designed to keep children from entering foster care. Tennessee's program included counseling by caseworkers and three basic contracted services--day care, homemaker, and mental health counseling. These services were provided either by the state or by private contractors.

According to a Utah foster care official, the sum of social services provided by the state's various social service programs represented the state's preplacement preventive service program. Utah expected caseworkers to make every effort to keep children in their natural homes and out of foster care by promptly identifying and delivering needed services. According to state officials, preventive services included protective services for children, health-related support services, and home management services. The purpose of the protective services for children program was to provide protection to children who were found to be in danger of, or subject to, abuse, neglect, or exploitation. If a child was reported to be in immediate danger, state policy required that an investigation be initiated within 1 hour of receiving the report. All other reports were to be responded to within 2 working days.

Each of the Utah counties we visited used teams of social workers to provide preplacement preventive services. One district office in Salt Lake County, for example, had a team consisting of

--two protective service intake workers,

--one protective service supervision worker,

--two foster care workers,

--one permanency planning worker, and

--two social workers responsible for family functioning services.

For its preplacement preventive service program, Virginia was combining its foster care and protective service programs into one bureau. The protective service program, which had as its primary goal the protection of children from physical and mental abuse, was the largest part of the state's preventive service program; other preventive services included counseling, day care, and transportation. In Richmond, preplacement preventive services were provided by several units. The High

Priority/Prevention Units handled some cases in which caseworkers tried to keep together families in which there was a high risk of a child entering foster care. Other units provided preventive services to families receiving Aid to Families with Dependent Children. The city also had protective service units.

STATES' EFFORTS TO EMPHASIZE PERMANENCY

Permanency is a key feature emphasized throughout Public Law 96-272. During our review of the implementation and operation of section 427 requirements, we noted that all seven states had taken steps to reunite children with their families or to facilitate adoption or other permanent placements for children who could not return home. In general the states had passed legislation, adopted policies and procedures, and provided training directed at achieving permanency for children in foster care.

Colorado

In March 1981 the Colorado State Board of Social Services, recognizing the need for a uniform statement to be disseminated statewide reflecting a commitment to permanency for children, approved a resolution that defined permanency as a way of viewing and organizing all child welfare activities to ensure that every child will have a satisfying permanent home within the shortest possible time. The resolution states that (1) all children are entitled to a stable, continuing, nurturing relationship with a parenting person, (2) this relationship should be provided by the child's biological parents whenever possible, (3) appropriate services should be provided to enable children to remain in their own home, and (4) when children must be placed temporarily away from their families, services should be provided to strengthen family functioning in order to reduce the time in placement. The resolution, in part, called for state and county departments of social services to (1) develop programs that could prevent and remedy problems that might otherwise result in placement, (2) thoroughly evaluate a child's emotional and developmental status and needs as part of the planning and placement process, (3) have parents, foster parents, and children be active participants in the planning process, (4) have a case review system at state and county levels to ensure appropriate, ongoing planning for each child, and (5) conduct training essential to the development of high-quality services for carrying out the philosophy of permanency.

The director, Division of Social Services, told us that the state views permanency planning as a process rather than a service--a process that can use any of the services provided by the state. In regard to training the staff of county departments of social services, the state had conducted 10 training sessions that had permanency content between October 1981 and July 1982.

Maine

The Department of Human Services' permanency efforts emphasized institutionalizing permanency by implementing adoption and family reunification policies. These policies delineated standards of casework practices and procedures that were to be followed when either developing permanency plans or securing permanent placements for children coming into or already in the department's care.

The department used several methods to make sure caseworkers complied with permanency policies. For example, case reviewers in each regional office were made responsible for assuring that each case file addressed permanency. Also, caseworker supervisors, as part of their routine duties, were to monitor casework practices to assure compliance with the department's policies.

The department had provided permanency training and technical assistance for caseworkers, their supervisors, and staff from private service providers through several workshops as well as courses conducted in each regional office. Data were not available to indicate how effective the department's permanency efforts had been.

Maryland

Officials told us the state had taken several steps toward focusing its services on permanency. When Public Law 96-272 was passed, an ad hoc child welfare group, made up of representatives of several child advocacy organizations, was formed to ensure that Public Law 96-272 funds were spent for the intended purposes. In addition, the state hired a consultant to develop a management improvement plan for its foster care program and evaluate local social services departments. As a result of this undertaking, (1) a foster care program manual was drafted, (2) revisions to the Maryland foster care regulations to stress permanency were proposed, and (3) statewide foster care training packages were issued for everyone responsible for placing children or supervising placement. The 3-day training program stressed permanency and was to be offered in each county.

Other steps the state had taken to focus its program on permanency included approving a case plan format that included a current permanency plan and creating boards to periodically review the cases of children in foster care. Data were not available for measuring the success of Maryland's permanency efforts.

South Carolina

South Carolina has taken a number of steps over the past few years to refocus its efforts on permanency. Department of Social Services officials told us that the program philosophy had changed from one of primarily having the caseworker determine a child's future to one of team decisionmaking, with emphasis on reuniting children with their natural parents or placing them for adoption. These officials also told us that the state had (1) revised the Department of Social Services policy and procedures manual to emphasize permanency, (2) established a Foster Care Review Board System to review cases every 6 months to determine if case plans adequately addressed permanency, (3) developed training programs for caseworkers, and (4) emphasized adoption for children of all ages.

Data were not available for determining the effectiveness of the state's permanency efforts; however, the Foster Care Review Board System's report for its calendar year 1980 review activities (the latest data available) showed that 1,110 of the 3,545 children reviewed left foster care. Of these 1,110 children

--497 were returned home,

--304 were placed with an adoptive family,

--105 were permanently placed,

--137 reached the age of majority, and

--67 left foster care for miscellaneous reasons.

The system's report also noted that the average length of stay in foster care for the children it reviewed had decreased by about 8.5 months from 1977 to 1980. The system's director attributed this decrease to the strong role the board had played in permanency.

Tennessee

An official of the Department of Human Services said that over the past few years, the department had been revamping its program policies, guidelines, and training to emphasize permanency. This official noted that the state had enacted legislation to aid in its permanency efforts. Specific actions taken in Tennessee to encourage permanency included

- --establishing a subsidized adoption program,
- --entering into specialized adoption contracts to develop adoptive placements for special needs children,
- --revising and reorganizing the social services manual to clarify policies and procedures and emphasize the permanency requirements in Public Law 96-272,
- --conducting training sessions and seminars on revised permanency procedures,
- --enacting legislation establishing court-appointed Foster Care Review Boards to periodically review cases, and
- --establishing a Children's Services Commission to serve as a child advocacy group and help implement the Foster Care Review Board System.

The department official also said that there had been a general change in casework philosophy during the last few years to emphasize getting children out of the foster care system. According to the official, the enactment of Public Law 96-272 gave impetus to this change.

The Department of Human Services had annual reports showing, for the state's fiscal year (July 1-June 30), how many children were in foster care, how many were removed from care, and why they were removed. The table below shows these data for the 3 fiscal years for which reports were available.

	Fiscal year ended June 30		
	1980	1981	1982
Children in care during period	5,756	5,895	5,698
Children removed from care	1,896	2,208	2,037
Reason removed:			
Returned home	833	910	908
Placed with relatives	191	230	267
Placed for adoption	321	362	399
Placed in institutions	43	22	19
Self-supporting or married	62	62	57
Reached majority	66	129	139
Other	380	493	248

Utah

The Department of Social Services considered permanency a major focus of its program for services to children and required that all efforts be made to limit the length of time a child spends in foster care. Specifically the state policy on permanency required:

--Within 30 days of placement in foster care, the caseworker and the family shall develop an initial treatment plan which shall be considered the first step in a permanent plan.

--A detailed, written plan for permanency shall be completed no later than 60 days after placement in foster care.

--The plan must include parents and child, including goals that must be achieved and the consequences of failure to achieve these goals.

--Caseworkers must focus on services to natural parents.

Specific instructions in the foster care manual state that (1) generally, no child should be in foster care more than 12 months, as placements longer than this often result in the child's being lost; (2) immediately upon placement caseworkers must begin to work with the natural parents toward the goal of returning the child home; and (3) a detailed written treatment plan for permanency must be completed no later than 60 days after foster placement--the time limit for the plan must generally be 3 months and no more than 6 months; the plan must be signed by the parents, the caseworker, and where necessary, the child; and the plan must be viewed as a flexible document that can be revised when necessary.

The state required social service workers to identify in their initial treatment plans and subsequent permanent plans the services needed to prepare the parents and child for the child's return. These services could include marriage counseling, individual and group therapy, supportive casework services, training in child rearing, homemaking services, day care, medical care, and psychiatric treatment.

Utah conducted two training workshops on permanency during 1981-82 for caseworkers and their supervisors. The state did not have any statistics readily available on how many children had been returned to their families or how many children had been placed either in adoption or in legal guardianship before the passage of Public Law 96-272. However, a Department of Social Services official told us that the number of children in foster care had decreased from about 1,400 in July 1978 to about 955 in April 1982.

Virginia

Virginia began focusing on permanency in 1977, with the enactment of state foster care legislation which required:

- --Selection of a permanency goal for each child, e.g., return home or adoption.
- --An assessment process within 60 days of a child's placement to identify problems and objectives in each case.
- --Development of a service plan.
- --Quarterly supervisory reviews for children in care less than 1 year and semiannual reviews for the others.
- --Judicial reviews to occur within 60 days of placement and annually thereafter.
- --The setting of priorities for foster children, especially focusing on getting children who have been in care a short time out of foster care.

Virginia had conducted permanency training and issued a 1980 permanency handbook to supplement the state law. The state also had an adoption subsidy program which, according to Division of

Social Services officials, has resulted in many adoptions. This program is designed to facilitate the adoption of children with special needs. To further encourage adoptions the state created the Adoption Resource Exchange of Virginia, a statewide register of children who have been awaiting adoption for more than 90 days. A child's chances for adoption are greatly increased when his or her availability is known statewide as opposed to countywide. Another method the state used to encourage adoption is a weekly televised public service announcement "Wednesday's Child," which features a special needs child each week.

Division of Social Services officials told us the state's foster care population had dropped from 11,303 on June 30, 1976, to 8,183 on June 30, 1981.

SECTION 427(a)(2)(B)'S EIGHTEEN ELEMENTS

AS IDENTIFIED BY HHS

CASE PLAN

A. THE WRITTEN CASE PLAN INCLUDES AT LEAST THE FOLLOWING:

(1) A description of the type of home or institution in which the child is to be placed.

(2) A discussion of the appropriateness of the placement.

(3) A plan designed to achieve placement in the least restrictive (most family-like) setting available consistent with the child's best interests and special needs.

(4) A plan designed to achieve placement in close proximity to the parent's home consistent with the child's best interests and special needs.

(5) A discussion of how the responsible agency plans to carry out the judicial determination made with respect to the child.

(6) A plan for assuring that the child receives proper care.

(7) A plan for assuring that services are provided to the child and parents to improve the conditions in the parents' home and facilitate return of the child home or other permanent placement of the child.

(8) A plan for assuring that services are provided to the child and foster parents to address the needs of the child while in foster care.

(9) A discussion of the appropriateness of the services that have been provided the child under the plan.

PERIODIC REVIEW

B. THE STATUS OF EACH CHILD IS REVIEWED PERIODICALLY BUT NO LESS FREQUENTLY THAN EVERY 6 MONTHS BY EITHER A COURT OR AN ADMINISTRATIVE REVIEW:

(10) To determine the continuing necessity for and appropriateness of the placement.

(11) To determine the extent of compliance with the case plan.

(12) To determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement in foster care.

(13) To project a likely date by which the child may be returned home or placed for adoption or legal guardianship.

(14) If the periodic review was an administrative review, the review was open to the child's parents.

(15) If the periodic review was an administrative review, it was conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

DISPOSITIONAL HEARING

C. A DISPOSITIONAL HEARING TO DETERMINE THE FUTURE STATUS OF THE CHILD IS TO BE HELD IN ACCORDANCE WITH SECTION 475(5)(C) NO LATER THAN 18 MONTHS AFTER ORIGINAL PLACEMENT AND PERIODICALLY THEREAFTER:

(16) The parents were to have been notified concerning the agency's intent to petition the court to remove the child from the home.

(17) The parents were to have been notified of any changes in the child's placement.

(18) The parents were to have been notified of any changes affecting visitation rights.

HHS SECTION 427 COMPLIANCE REVIEW

RESULTS FOR FISCAL YEAR 1981

State	Results
Arizona	Substantial
Arkansas	Conditional
* Colorado	Substantial
Connecticut	Conditional
Illinois	Substantial
Iowa	Substantial
Kansas	Substantial
Kentucky	Substantial
* Maine	Withdrew certification
* Maryland	Conditional
Massachusetts	Withdrew certification
Michigan	Decision withheld
Mississippi	Withdrew certification
Missouri	Substantial
Montana	Conditional
Nebraska	Withdrew certification
Nevada	Withdrew certification
New Jersey	Substantial
New York	Substantial
North Dakota	Substantial
Ohio	Ineligible
Oklahoma	Substantial
Oregon	Substantial
Puerto Rico	Ineligible
Rhode Island	Ineligible
* South Carolina	Substantial
South Dakota	Substantial
* Tennessee	Conditional
* Utah	Substantial
Vermont	Ineligible
* Virginia	Conditional
Washington	Substantial
West Virginia	Conditional
Wyoming	Substantial

*Included in GAO's review.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JAN 5 1984

Mr. Richard L. Fogel
Director, Human Resources
Division
United States General
Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for our comments on your draft of a proposed report "Better Federal Program Administration Can Contribute to Improving State Foster Care Programs." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE GENERAL ACCOUNTING OFFICE'S DRAFT REPORT "BETTER FEDERAL PROGRAM ADMINISTRATION CAN CONTRIBUTE TO IMPROVING STATE FOSTER CARE PROGRAMS"

General Comments

Overall, we find this to be an interesting draft report but limited in scope, utility and general application. As such, it may provide misleading information on both State and Departmental activities and accomplishments.

We agree with aspects of the four recommendations. We have serious reservations, however, about the report's lack of timeliness and the methods applied to and the conclusions drawn from limited data. Specifically:

- GAO reviewed seven States' FY 1981 performance in implementing Section 427 of the Social Security Act as amended by P.L. 96-272. FY 1981 was the first year of implementation of this complex new law. HHS' experience in the implementation of new legislation has shown that the initial year of implementation of any program is invariably atypical.

- GAO's two year delay in producing the report means that it is outdated and of limited usefulness in 1984 in indicating how States actually have implemented P.L. 96-272 to date.

- Of the seven States studied, one (Maine) withdrew its section 427 certification. Although it had withdrawn from HHS' compliance review, GAO chose to include it in the study sample, thus, skewing the results of the study.

- GAO reviewed case records in two counties in each of the seven States but admits - "The two jurisdictions selected can be considered as a test of the State system _but not as being representative of the entire state_." Under these circumstances findings are anecdotal only. (Page 6.) (Emphasis supplied.)

- GAO's narrow interpretation of the law which requires 100% compliance in all instances assures negative findings. Our experience with a variety of programs in the Department indicates that achieving 100% compliance in each individual case, in effect a 0% error rate, is operationally unworkable.

- GAO's narrow analysis and conclusions do not reflect the factual reality that, in FY 1981 and continuing into the present, overall States have made great progress in implementing the procedures and protections for children required by Public Law 96-272, including Section 427, and that they are continuing to do so. This progress in implementation, documented by several non-Departmental studies, is evidenced by the reduced number of children in foster care and the reduced amount of time children spend in foster care. (A fuller and more up-to-date picture of State implementation of P.L. 96-272 is contained in the Department's Report to Congress on this statute due to be released in the near future.)

Our specific comments on each of the GAO recommendations is as follows:

GAO Recommendation

1. We recommend that the Secretary revise the program regulations to provide additional guidance to States as to what is required to implement section 427. At a minimum the regulations should require that:

   (a) the appropriateness of and necessity for a child's current placement be recorded on the inventory;

   (b) the data in the statewide information system be available at a single location;

   (c) case plans, periodic reviews, and dispositional hearings contain all the elements and make all the determinations required by the Act;

   (d) a dispositional hearing be other than court proceedings dealing with the custody or other issues related to the initial placement of the child and occur at a reasonable period after placement and after the case plan has been in effect; and

   (e) subsequent dispositional hearings be held within a time period established by HHS.

Department Comment

HHS agrees that the Department should revise regulations for Section 427 and a draft Notice of Proposed Rulemaking (NPRM) is under review in the Department. However, we do not agree with GAO's interpretation of the statute or their recommendations for specific provisions of the regulations.

On May 23, 1983 the Department published final rules implementing Public Law 96-272. Because of the specificity of the law and the Administration's policy of minimal regulation, no rules governing compliance with section 427 were published. Initially, our intent was to base the section 427 compliance reviews on reasonable State interpretation of the statute. However, in conducting the reviews, we found that the statute was not sufficiently clear in all its aspects. The statutory requirements are complex, detailed, time-specific and are scattered throughout both title IV-E and title IV-B of the Act. Therefore, the Department is currently developing a NPRM specifically addressing the requirements and safeguards of section 427.

1-a The Department has considered an inventory valid if the State has described the procedures used to verify that each child on the inventory is or has been in care and that no children in care have been omitted. The law does not require a separate inventory form for each child on which determinations of appropriateness and necessity for placement must be included.

The Department believes that States may opt to make these determinations at the time of the inventory, at the time the child's case plan is being developed, or at the time the first periodic review is conducted.

1-b The basis for this recommendation is discussed on page 34 of the report where GAO states that, except for Maryland, the information in each State's system was readily available at the State office.

The Department believes that neither the law nor the legislative history requires or suggests that Congress intended States to keep such centralized information. A statewide information system which maintains required information at the county level can indeed satisfy the requirements of section 427(a)(2)(A) as long as the State can 'readily determine' the information.

1-c The basis for this recommendation is discussed on pages 15-16 where GAO questions the Department's decision to determine a case record acceptable if all major safeguards and at least 13 of the 18 remaining requirements are met. GAO quotes a January 11, 1982 memorandum from HHS' Office of General Counsel (OGC) and interprets it to require that all 18 elements must be met.

Section 427 provides that a State may be eligible for certain foster care incentive payments if, among other things, it "has implemented and is operating _to the satisfaction of the Secretary_" certain systems providing protections for children in foster care. (Emphasis added.) The Department has interpreted this statutory language to mean that it has discretion in determining whether States are operating their systems to the Secretary's satisfaction.

In light of this discretion, the Department has established a two-part compliance review to determine States' eligibility. The first part of the review determines whether States have fully implemented their systems and is called an administrative procedures review. In this part of the review, the Department looks at the administrative procedures a State has in place to implement the 18 protections specified in the statute. The Department considers a State to be in compliance with this part of the review only if it has fully implemented 100% of the 18 statutory protections. State administrative procedures must make all the statutory protections mandatory and must document each and every element of the case review system.

If the Department finds that a State has fully implemented 100% of the 18 statutory protections, it then conducts the second part of the compliance review. This part is a review of the operational aspect of compliance through a case record survey. The Department has exercised its discretion in determining whether States are operating their systems to the Secretary's satisfaction by establishing acceptable levels of performance regarding the number of statutory protections which individual case records must contain and the number of satisfactory case records required for an acceptable State system.

The Department believes that its policy of determining compliance in a two-part review is fully consistent with the OGC memorandum discussed in the GAO Report. The Department views the following language in the OGC memorandum as support for its compliance policy: "Thus, the Secretary, once satisfied that 100% of the minimum requirements of section 427 . . . have been implemented, does have _considerable discretion_ in reviewing the _operational_ aspects of individual State compliance." (Emphasis added.)

Based on the very real problems that must be worked out with State and local court systems in some instances, and the fact that we are looking at the first years of implementing a detailed and complex statute, we have concluded that some leeway is needed to assist States in operating their foster care programs. Otherwise, the penalty would be disproportionate to the failure to meet the requirements, e.g., a State loses all its incentive funds because the child's periodic review was conducted on May 16 instead of May 15 (i.e., was not conducted within 6 months) or the caseworker had neglected to include one of the nine items required as part of a child's case plan. Therefore, we developed percentage levels and numerical standards that we believe are reasonable measures of operational compliance. It has been our intention to assist States in meeting statutory requirements in the initial years and to require increasingly higher levels of performance in later years. We believe children will be better served by making available, whenever possible, the funds States need to improve their systems and provide these protections for children.

1-d The Department believes that it should not establish a minimum time after placement before a dispositional hearing could be held. This would be too prescriptive on the States. However, we agree that the dispositional hearing is not intended to address initial custody, but rather the future status of the child when the case plan has been in effect for a time.

1-e The Department agrees that subsequent dispositional hearings should be held within clearly established periods. However, in accordance with the administration's policy of minimal regulation and flexibility to the States, we believe the periods should be established by the State. Accordingly, the May 23, 1983 final regulations require States to establish "reasonable, specific, time-limited periods" for conducting further dispositional hearings.

GAO Recommendation

2. We recommend that compliance review guidelines conform to the provisions in the revised regulations and contain specific criteria which HHS can use to ensure that each State has fully implemented section 427.

Department Comments

HHS agrees. As noted, the Department has under development a Notice of Proposed Rulemaking (NPRM). When published in final, these regulations will be the basis for the policies, criteria and guidelines to be used in conducting section 427 reviews.

3. GAO Recommendation

We recommend that once the program regulations and the compliance review guidelines have been revised, all States certifying to section 427 must be reviewed in accordance with the revised criteria.

Department Comments

HHS agrees. When the revised program regulations are final, from that time forward all States will be reviewed in accordance with the revised regulations and guidelines.

4. GAO Recommendation

We recommend that funds be recovered promptly from States that have certified they made the improvements specified in section 427 and are later found to be not in compliance with program requirements.

Department Comments

HHS agrees, and we have taken several steps to recover funds from ineligible States. Two States withdrew their certifications for Fiscal Year 1981 or 1982 and did not draw down funds subject to 427 eligibility. Therefore, no further action is needed regarding those States. Three other States that withdrew their certifications drew down some funds subject to section 427 eligibility. We have sent letters to them requesting return of the funds. To date, one State has returned the funds. Follow-up letters have been sent to the two States that have not responded. In addition to those five States that withdrew their certification, two States were found ineligible, did not appeal the findings, and drew down funds subject to section 427 eligibility. We have sent them letters, requesting that they return the funds. One State has agreed to return the funds. A follow-up letter has been sent to the other State.

HHS has also instituted procedures to collect the funds promptly in all new cases. The Department is routinely requesting States that have withdrawn their certifications to repay the funds awarded under the Section 427 authority within 30 days. For States that have not withdrawn their certifications, the Commissioner's letter of final decision informing them of their ineligibility now includes a requirement that the funds be repaid promptly. Should the State appeal the decision to the Grant Appeals Board, collection of the funds will be postponed until a decision has been made. There has been one final Grant Appeals Board decision to date, which upheld the Commissioner's decision that the State was ineligible for section 427 funds. The Department has directed the State to repay the funds within 30 days.

HHS is considering developing a procedure that will require prompt offset to the grant award authority, for this and similar programs, to recover such funds and appropriate interest (1) when the State does not file an appeal or (2) immediately after the appeal decision is rendered, in lieu of a State-initiated repayment.

GAO note: Page references in this appendix have been changed to correspond to page numbers in the final report.

State of Colorado

DEPARTMENT OF SOCIAL SERVICES

1575 SHERMAN STREET
DENVER, COLORADO 80203

RICHARD D. LAMM
GOVERNOR

GEORGE S. GOLDSTEIN, Ph.D.
Executive Director

December 9, 1983

Mr. Richard L. Fogel, Director
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

We have carefully reviewed the draft of your proposed report on Section 427 provisions of HR 96-272. In general, the report accurately reflects the situation in Colorado. We did not participate in the case reviews so cannot confirm the accuracy of this data, but we accept the findings in view of the tight criteria used in evaluating case plan elements. For instance, no elements can be missing in order to be considered an acceptable case plan. We do disagree with the necessity of having 100% of the elements being found in a case plan, to have an acceptable case plan in practice however. We agree with this as a goal but some measure of reasonableness must also be applied because of the numerous factors involving human error that work against attaining such a goal, as well as the fact that there are few absolutes in human services.

While you may not wish to add additional information to your study, I will briefly update you or additional actions taken by Colorado to strengthen our child welfare program:

1. For several years we have been involved in developing a new child welfare data system that combines client tracking, fiscal and provider information with the 1st phase of implementation expected to be piloted about July of 1984.

2. We have just completed and reissued a totally new set of rules and regulations (November 1983) that expands and strengthens many aspects of compliance with P.L. 96-272 including permanency planning concepts, periodic reviews, case plans, etc.

3. We have worked with the court system and instructed county departments concerning specific wording of court petititons and orders relative to prevention and reunification issues.

We concur with the conclusions and recommendation concerning the need for HHS provision of sufficient guidance to states to ensure that states will know what is required to implement Section 427 of P.L. 96-272. We do not agree with the recommendation that states "must fully implement Section 427" and comments made above relative to the necessity of reasonableness apply if "fully implement" means 100% at all levels of detail.

Mr. Richard L. Fogel December 9, 1983

We also have difficulty with the recommendations to re-review all states that certified compliance and take fiscal sanctions for those states found ineligible based on new compliance criteria. This would be most unjust and inappropriate in view of the recognized weakness in adequate and consistent guidance from HHS to states that had proceeded to certify eligibility in good faith, and without any rules and regulations having been issued in final form until May 23, 1983. States should be given at least 12 months for implementation following any issuance of new compliance criteria before any fiscal sanctions should be considered.

We would be happy to discuss these issues further if you wish to contact us in this regard.

Sincerely,

Cecilia Holmes
for
George S. Goldstein, Ph.D.
Executive Director

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

JOSEPH E. BRENNAN
GOVERNOR

MICHAEL R. PETIT
COMMISSIONER

December 21, 1983

Richard Fogel, Director
Human Resources Division
U.S. General Accounting Office
441 G. Street N.W.
Washington, D.C. 20548

Re: Draft Report to Subcommittee on
Public Assistance and Unemployment
Compensation, Regarding P.L.96-272 § 427

Dear Mr. Fogel:

This letter is in response to the draft proposed report to the Subcommittee on Public Assistance and Unemployment Compensation, House Committee on Ways and Means, which you kindly provided for our review and comment.

Our comments indicate agreement with various aspects of the report as well as disagreement with other particular aspects. We will be brief in these comments but would be available for more extensive discussion if desired.

(1) Although it was our initial understanding that the Department of Health and Human Services intended for states to have maximum flexibility in interpreting Section 427 requirements, there is general agreement among the states in Region I that this has not been the case with regard to compliance reviews done by Region I ACYF.

It was our experience that Region I ACYF was more restrictive than the law and, in fact, more restrictive than other Regional Offices of ACYF in their application and interpretations of Section 427. Further, their application and interpretations of that Section within the Region were inconsistent. We believe this constitutes discriminatory application of the law.

(2) In a similar vein, it was our understanding that until comprehensive regulations were finally promulgated, Section 427 would be applied according to state specific definitions, laws and policies. We saw no evidence of such application in Maine.

(3) We understood that Section 427 funds were intended to be incentive payments to assist states in implementation of the law. However, the Department of Health and Human Services has apparently interpreted these funds as reward payments in full compliance with the law. Because of our understanding of the nature of the funding, Maine used $300,000 of IV-B funds to set up our administrative case review system, intending to use the Section 427 additional funds to pay for this. However, because of the difference in interpretations, Maine was forced to use existing monies which resulted in the sacrifice of some preventive services.

Richard Fogel
December 21, 1983
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(4) Maine certified its compliance with Section 427 for Fiscal Year 1981 on the advice of Associate Commissioner Frank Ferro. Our state specific interpretation of Section 427 was that the systems for compliance had to be in place at the end of the applicable fiscal year rather than for the entire fiscal year. This was consistent with Policy Interpretations we had received regarding implementation of Title IV-E.

Because of the total lack of regulatory guidance at the time we were encouraged to certify compliance, Maine presented in the letter of certification a straightforward and honest description of the systems in place which we believed constituted substantial compliance with Section 427.

As documented in this draft report, some states passed the certification review without having all components in place and operational. It appears then that Maine has been penalized for acknowledging its questions regarding the requirements for compliance. This again indicates the inconsistent and discriminatory application of Section 427.

(5) Although Maine disagreed with the Department of Health and Human Services' interpretation of Section 427, we withdrew our certification as soon as it became clear that there was a significant difference of interpretation. Because Maine's withdrawal of certification is not indicated until the end of the draft report, readers of the report could draw the inference that Maine was dishonest in its initial certification. We certainly assume that the final report will correct this inference.

(6) Maine disagrees that the law requires that the case plan be a separately identifiable document. Section 475(1) refers only to a written document which contains certain information. At the time of certification, Maine had in place a policy which required recording of an "assessment" which was to contain many of the descriptive elements of the case plan definition and a "case plan" which includes the future action component of the definition. Together these comprise the case plan for compliance with P.L. 96-272. We continue to believe, absent promulgated regulations, that ours was an appropriate interpretation of the law. (Isn't it the purpose of rules to clarify points of the law so that this type of disagreement over interpretation of key issues is minimized?)

At this time Maine has established a separately identifiable case plan document. This is indicative of the improvements we have been making in our foster care system, improvements which actually were initiated in 1978, prior to the enactment of P.L. 96-272 in 1980.

(7) There continues to be strong disagreement regarding the interpretation of the requirements of a "dispositional hearing" to be held within 18 months of the child's placement. We can find no support, either in the law or the current regulations, for the position of the GAO that the dispositional hearing is intended to be held after a child's case plan had been in effect for a reasonalbe period of time, and that the dispositional hearing was intended to serve as a catalyst for permanent placement. Further, the GAO's interpretation seems to create a need for yet another definition or interpretation with respect to what constitutes a "reasonable period of time."

The original interpretation of the dispositional hearing requirement seemed to be a requirement that no child remain in foster care for any extended period of time without a judicial review of that placement.

The continued disagreement regarding the intended meaning of the dispositional hearings is further indication of the confusion which has resulted from lack of clear and consistent guidelines in applying Section 427. We believe that it cannot be stressed strongly enough that such consistent guidelines are needed immediately if not sooner. Without such guidelines, continued confusion and inconsistent application of the law will be inevitable.

(8) Maine has been increasingly concerned with the inordinate amounts of time which have been consumed in our attempts to comply with constantly shifting interpretations of Section 427. We note that the draft report confirms that this has been a problem in other states as well. The conflict between Congress and the Administration and the resulting bureaucratic maneuverings can only result in more time spent in administrative scrambling and less time devoted to the task at hand, helping children and families.

(9) It is unfortunate the report gives so little recognition to the sophisticated case review system in Maine. This system was one of the first extensive review systems developed in the country which incorporated the case review provisions of the law before the law was enacted. This system has received national recognition with Maine having provided technical assistance and consultation to other states.

(10) Maine would like to suggest an alternate way that this whole system could have been carried out which we feel would have been of far more benefit to the children whom the law was intended to serve. We feel that the Administration for Children, Youth and Families should have identified with each state where they were at in terms of coming into compliance with the various provisions of the law. At that point a plan could have been written with those states that did intend to comply outlining the steps that the states would take and the amount of time that would be necessary for them to come into full compliance with the law. The additional IV-B funding could then have been used as an incentive to help the states reach the goals that have been set forth in their plan. In this way the Department of Health and Human Services would have had a plan for each state which they could have monitored and provided technical assistance to help the states implement. This is how most corrective action programs are carried out between the federal government and states and would have represented a far more positive approach than the discriminatory and extra-legal approach which was adopted by the Administration for Children, Youth and Families.

(11) Although we maintain Maine has been penalized by the inconsistent application of Section 427, we will be returning the Section 427 funds received from the Department of Health and Human Services for FY 1982 and 1982. We do so only

under strong protest and we urge that GAO recommend that a moratorium be placed on all adverse actions by the Department of Health and Human Services until such time as it sets forth rules and regulations duly and legally promulgated.

Thank you again for forwarding the draft report for our review. We hope the final report will incorporate the suggestions and concerns set out above.

Sincerely,

Peter E Walsh

Peter E. Walsh
Director
Bureau of Social Services

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DHR DEPARTMENT OF HUMAN RESOURCES

STATE OF MARYLAND 1100 NORTH EUTAW STREET BALTIMORE, MARYLAND 21201

OFFICE OF THE SECRETARY

TELEPHONE:
TTY: 383-6994

December 13, 1983

Mr. Richard Fogel, Director
Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

I have reviewed the proposed report prepared by the staff of your office on the states' implementation of the Adoption Assistance and Child Welfare Act of 1980. I read the report with great interest since Maryland was one of the seven participating states and since our state has also completed two "427" federal reviews.

Before commenting on your conclusions and recommendations, I want to comment on some of your findings.

FINDINGS:

1. It is stated on Page 32 of the report that Maryland's foster care inventory did not contain information about the appropriateness and necessity of each child placement. As my staff explained to you and to the Regional HHS Office, the appropriateness and necessity of individual placements cannot be validly determined merely by asking those workers who input the data into a manual or automated system. At best, the responses would be the subjective judgement of the caseworker. Instead, Maryland completed several initiatives which we believe are more effective in determining the appropriateness and necessity of placement, including:

A. The state looked at aggregated placement data and analyzed the data, utilizing certain criteria relevant to these issues; e.g. the length of time in care, the reason for placement, the restrictiveness and close proximity of the placement, and the permanency plan.

B. Maryland hired a contractual staff from July 1982 through July 1983 to go into every local department and complete nine tasks including: (1) updating the inventory, and (2) assessing the appropriateness and necessity of placement, using federal and state regulations as criteria.

RUTH MASSINGA
Secretary

HARRY HUGHES
Governor

JAMES J. TRAGLIA
Deputy Secretary

Mr. Richard Fogel
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December 13, 1983

I feel that these initiatives represent a more objective and valid process for determining the appropriateness and necessity for placement.

2. You state, on Page 37, that Maryland did not prepare written case plans for foster children that satisfied the Act's requirement, and that no other case in the state had written case plans. This statement does not accurately reflect Maryland's implementation of the Case Plan requirements. The Foster Care division of the Social Services Administration had been working on the development of a standardized case plan since January 1981. The final draft, which was designed by a committee consisting of representatives from local agencies and the Foster Care Review Boards, was submitted for approval in January, 1982. The first printing occurred in April, 1982; the final printing was in August, 1982.

At the time of your visit, we explained that the form was in process. Statewide training had already occurred. Staff was required to include all elements of the case plan in their case records, since July, 1981. I have attached, for your review, a Circular Letter #82-9, which was disseminated to all local departments of social services and which includes the requirements for the completion of the case plan. The case plan which I have attached to this letter was a standardized form which helped to bring consistency to the records.

3. On Page 45 of the report, it indicates that of the 132 cases read, none had dispositional reviews. This finding is based on your rejection of the state's definition of foster care. We share your belief that Congress intended dispositional hearings to serve as catalysts for permanency. We do not, however, share your belief that the dispositional hearing as defined in our state law precludes permanency planning. What is needed to assure permanency, and has been recently added to our Court rules and procedures, is a requirement that subsequent dispositionals be no later than 18 months after the initial hearing. I have attached Sec. 3-820, from the Annotated Code of Maryland. It defines Dispositional Hearings at the time of your staff review.

CONCLUSIONS:

In the Conclusion section of this report, the recommendation is made on Page 21, that HHS improve its administration of Section 427 provisions by "promptly recovering funds from states that are found to be not in compliance with the Act's requirements."

We believe this is a punitive, non-constructive approach to states' efforts to comply with the law. A more reasonable approach, which has become traditional in other federal assistance programs, is to require states to implement corrective action measures. I have attached to this letter our response to Commissioner Hodges, regarding our 1982 "427" review. It will help to articulate our belief that punitive responses to states' implementation of the law does even more to delay the goals as set forth by Congress in PL 96-272.

SUMMARY:

We believe very strongly in the tenets of PL 96-272. Even before its implementation the state had initiated many efforts to improve our foster care program. Maryland's good faith efforts consistent with the requirements of PL 96-272 continue.

After a thorough review of the proposed report, it is our opinion that it does not offer an accurate picture of at least Maryland's efforts to implement PL 96-272. The findings are based on a narrow reading of 132 cases in 2 jurisdictions in Maryland. The reviewers employed criteria which were narrow, as in the instance of dispositional hearings. The reviewers' definition of dispositional hearings was contrary to Maryland state law.

The report goes beyond the purpose of the study, which was to review how the Department of Health and Human Services implemented the "427" requirements and to evaluate that agency's guidance and assistance to states in their implementation efforts. Yet the report ends with a recommendation that funds be recovered promptly from states. Since this review by the General Accounting Office was not a formal statewide "427" review, such recommendations are totally inappropriate.

We would be most happy to give you any further information that you need, so that the report more accurately reflects the State's implementation of PL 96-272. If you are in disagreement with the positions stated in this letter concerning the findings for Maryland, I would appreciate you calling me before the report is finalized.

Sincerely,

Ruth Massinga

Ruth Massinga

GAO note: Page references in this appendix have been changed to correspond to page numbers in the final report.

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WILLIAM L. LUKHARD
COMMISSIONER

COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

December 15, 1983

Mr. Richard L. Fogel, Director
United State General Accounting Office
Human Resources Division
441 G Street, NW, Room 6844
Washington, DC 20548

Dear Mr. Fogel:

Thank you for the opportunity to review the draft report on what the Department of Health and Human Services (HHS) can do to help the states implement the foster care provisions of Section 427 of the Social Security Act.

We are in agreement with the following points which were made in the report:

1. Better and more timely guidance by HHS could have eliminated the inconsistency among the states as to the exact intent of the Act;
2. There appears to have been inconsistency among the federal regional offices in conducting reviews of the states since there was no specific guidance to the reviewers by HHS; and
3. States were never notified of potential problems with their self-certification even though such problems were recognized at the regional level. These problems are now the basis for the determination of non-compliance during federal reviews.

Even though we agree with the above findings, we do not concur with your recommendations concerning the recovery of funds. Since the findings show a lack of guidance on the part of HHS, states should not be penalized for the confusion which they have created. We would recommend that a corrective action plan be developed at the federal level to provide states with specific criteria for the implementation of the requirements of the Act. This criteria can then be used to review the states' compliance beginning with FY84. We feel FY84 is an appropriate timeframe since federal regulations for the act were issued during May of 1983.

VSS
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An Equal Opportunity Agency

Mr. Richard L. Fogel
Page Two

We look forward to receiving your final report and feel certain that with sufficient guidance from HHS the national foster care program will meet the intent of the law.

Very truly yours,

William L. Lukhard

WLL:BB/jp

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